

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLE 42

Real Property



40th ANNIVERSARY
of
HOME RULE



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 19

Title 42

Real Property



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DISTRICT OF COLUMBIA
OFFICIAL CODE

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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 19 replaces any existing Volume 19 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

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June 2013

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June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

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Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

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6. Housing and Building Restrictions and Regulations.
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*Title has been enacted as law.

Title

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*Title has been enacted as law.

CITE THIS BOOK

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SUBTITLE I. GENERAL.

CHAPTER 1. ACKNOWLEDGMENTS.

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Subchapter I. General.

PART A.

ACKNOWLEDGEMENTS OF DEEDS.

§ 42-101. No acknowledgment of deed by attorney.

(a) A general or specific power of attorney executed by a person authorizing an attorney-in-fact to sell, grant, or release any interest in real property shall be executed in the same manner as a deed and shall be recorded with or prior to the deed executed pursuant to the power of attorney. If the power of attorney is recorded prior to the deed executed pursuant to the power of attorney, the deed being executed pursuant to the power of attorney shall include a recording date and instrument number reference of where the original recorded power of attorney is located in the Office of the Recorder of Deeds for the District of Columbia. All powers of attorney executed in accordance with this section shall contain on the top of the front page, in bold and capital letters, the following words:

"THIS POWER OF ATTORNEY AUTHORIZES THE PERSON NAMED BELOW AS MY ATTORNEY-IN-FACT TO DO ONE OR MORE OF THE FOLLOWING: TO SELL, LEASE, GRANT, ENCUMBER, RELEASE, OR OTHERWISE CONVEY ANY INTEREST IN MY REAL PROPERTY AND TO EXECUTE DEEDS AND ALL OTHER INSTRUMENTS ON MY BEHALF, UNLESS THIS POWER OF ATTORNEY IS OTHERWISE LIMITED HEREIN TO SPECIFIC REAL PROPERTY."

(b) A person with a general or specific power of attorney executing a deed for another shall sign and acknowledge the deed as attorney-in-fact.

(c) A power of attorney is deemed to be revoked when the instrument containing the revocation is recorded in the Office of the Recorder of Deeds for the District of Columbia. A person revoking a power of attorney shall sign and acknowledge the instrument containing the revocation. Notwithstanding the above, any attorney-in-fact receiving written notice of the revocation by the party who granted the power of attorney shall cease from any further action as attorney-in-fact on behalf of the party who granted the power of attorney. The instrument of revocation should reference the recording date and instrument number of the original power of attorney. A person granting a power of attorney may revoke the power to convey real property without affecting any other powers contained in the original power of attorney by reciting in the revocation that the revocation of the power to convey real property shall not affect the remaining powers granted in the original power of attorney.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 498; Apr. 27, 1994, D.C. Law 10-110, § 2(b), 41 DCR 1023.)

Cross references. — Construction of general power of attorney relating to real property transactions, see § 21-2104.

Effective date of deeds, see § 42-401.

Failures in formal requisites of an instrument, fraudulent acts, see § 42-404.

Statutory form of power of attorney, authorized real property transactions, see § 21-2101.

Prior Codifications. — 1981 Ed., § 45-601. 1973 Ed., § 45-401.

Legislative history of Law 10-110. — Law

10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

CASE NOTES

ANALYSIS

Apparent authority.

Forgery.

Good faith reliance.

In general.

Summary judgment.

Apparent authority.

Daughter had apparent authority to convey her father’s property to herself, under power-of-attorney agreement purportedly executed by father that authorized daughter to make gifts of father’s assets so as to utilize annual gift tax exclusion or minimize death taxes, even though value of father’s estate was far below threshold for such taxation, where nothing in agreement indicated that father had small estate or that property was father’s only asset, and daughter’s deed to herself did not demonstrate that transfer was not for authorized purpose. *Smith v. Wells Fargo Bank*, 991 A.2d 20, 2010 D.C. App. LEXIS 141 (2010).

Forgery.

If a power of attorney is a forgery, a deed of trust is void and hence ineffective under Dis-

trict of Columbia law to withstand challenge to its being an encumbrance against the property purportedly encumbered. *McNairy v. Estate of Baxter (In re Baxter)*, 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

Good faith reliance.

Closing attorney and lender were not negligent under District of Columbia law by proceeding to process and record deed of trust in good faith reliance upon duly notarized power of attorney where no circumstances came to their attention that would have raised questions as to validity of power of attorney. *McNairy v. Estate of Baxter (In re Baxter)*, 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

In general.

Where, on reliance upon a parol agreement for a lease for more than one year and a lease embodying such agreement, but executed not by the lessor but by his attorney, the tenant entered into possession and expended large sums of money, equity, at the suit of the tenant, will enforce the agreement, notwithstanding the invalidity of the lease under Code of Law 1901, § 492, and Code §§ 498, and 1116. D.C.

Code 1929, T. 25, § 150 and T. 11, § 1. *Kresge v. Crowley*, 47 App.D.C. 13, 1917 U.S. App. LEXIS 2588 (1917).

A deed cannot be deemed valid under District of Columbia law based on a power of attorney that itself is a nullity. *McNairy v. Estate of Baxter* (In re Baxter), 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

A bank receiving a power of attorney is not required under District of Columbia law to go behind the power of attorney to assure that the transaction attempted pursuant to the power of attorney was indeed intended. *McNairy v. Estate of Baxter* (In re Baxter), 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

A power of attorney authorizing an attorney-in-fact to grant an interest in real property must be executed in the same manner as a deed under District of Columbia law. *McNairy v. Estate of Baxter* (In re Baxter), 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

Statute which prohibits execution or acknowledgment by attorney of any deed of conveyance of either real or personal estate applies

only to deeds of conveyance and not to contracts to convey which are subject to the statute of frauds which limits enforceability of certain agreements to those signed by party to be charged or by a person authorized by party to be charged. D.C. Code §§ 28-3502, 45-401. *Gustin v. Stegall*, 347 A.2d 917, 1975 D.C. App. LEXIS 274 (1975), writ of certiorari denied by 425 U.S. 974, 96 S. Ct. 2174, 48 L. Ed. 2d 798, 1976 U.S. LEXIS 1645 (1976).

Summary judgment.

Genuine issues of material fact existed as to whether power of attorney agreement purportedly executed by father that gave power of attorney to daughter, which was used by daughter to conduct transfer of his property to herself, was forged and thus rendered such transfer and bank's subsequent interest in property as void, precluding summary judgment in siblings' quiet-title action against sister and bank that had ultimately obtained title to property through foreclosure sale. *Smith v. Wells Fargo Bank*, 991 A.2d 20, 2010 D.C. App. LEXIS 141 (2010).

PART B.

ACKNOWLEDGMENT IN U.S. TERRITORIES.

§ 42-111. Acknowledgments in Guam, Samoa, and Canal Zone.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public; provided, that the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified.

(June 28, 1906, 34 Stat. 552, ch. 3585.)

Prior Codifications. — 1981 Ed., § 45-605. 1973 Ed., § 45-405.

§ 42-112. Acknowledgments in Philippine Islands and Puerto Rico.

Deeds and other instruments affecting land situate in the District of

Columbia may be acknowledged in the Philippine Islands and Puerto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public; provided, that the certificate by such notary in the Philippine Islands or in Puerto Rico, as the case may be, shall be accompanied by the certificate of the Executive Secretary of Puerto Rico, or the Governor or Attorney General of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be.

(Mar. 22, 1902, 32 Stat. 88, ch. 273; Mar. 2, 1917, 39 Stat. 968, ch. 145, § 54; May 17, 1932, 47 Stat. 158, ch. 190.)

Prior Codifications. — 1981 Ed., § 45-606. 1973 Ed., § 45-406.

PART C.

REPEALED PROVISIONS.

§§ 42-121 to 42-123. Manner of acknowledgment; form of certificate; acknowledgment out of District; acknowledgment in foreign country [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-205, § 12(a), 37 DCR 8444.)

Prior Codifications. — 1981 Ed., §§ 45-602 to 45-604. legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Legislative history of Law 8-205. — For

§ 42-124. Certain defective acknowledgments prior to March 3, 1879, validated. [Repealed].

Repealed.

(Apr. 21, 1994, D.C. Law 10-110, § 4, 41 DCR 1023.)

Prior Codifications. — 1981 Ed., § 45-607. legislative history of D.C. Law 10-110, see Historical and Statutory Notes following § 42-101.

§§ 42-125 to 42-129. Certain defective deeds and acknowledgments prior to January 1, 1969, validated; acknowledgments by married women — prior to April 10, 1869; same — when validates defective power of attorney; validation of deeds made without acknowledgment prior to January 1, 1902; Acts of Congress and Acts of Maryland cumulative as to deeds prior to January 1, 1902 [Repealed].

Repealed.

(Apr. 21, 1994, D.C. Law 10-110, § 4, 41 DCR 1023.)

Prior Codifications. — 1981 Ed., §§ 45-608 to 45-612. legislative history of D.C. Law 10-110, see Historical and Statutory Notes following § 42-101.

Legislative history of Law 10-110. — For

Subchapter II. Uniform Notarial Acts.

§ 42-141. Definitions.

For the purposes of this subchapter, the term:

(1) “Acknowledgment” means a declaration by a person that states:

(A) The person has executed an instrument for the purposes stated in the instrument; and

(B) If the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed the instrument as the act of the person or entity represented and identified in the instrument.

(2) “District” means the District of Columbia.

(3) “In a representative capacity” means to act as:

(A) An authorized officer, agent, partner, trustee, or other representative for and on behalf of a corporation, partnership, trust, or other entity;

(B) A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(C) An attorney in fact for a principal; or

(D) An authorized representative of another in any other capacity.

(4) “Notarial act” means taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, noting a protest of a negotiable instrument, or any other similar act authorized by law.

(5) “Notarial officer” means a notary public or other officer authorized to perform a notarial act.

(6) “Verification upon oath or affirmation” means a declaration that a statement made by a person upon oath or affirmation is a true statement.

(Mar. 6, 1991, D.C. Law 8-205, § 2, 37 DCR 8444.)

Prior Codifications. — 1981 Ed., § 45-621.

Legislative history of Law 8-205. — Law 8-205, the “Uniform Law on Notarial Acts of 1990,” was introduced in Council and assigned Bill No. 8-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-280 and transmitted to both Houses of Congress for its review.

Construction of Law 8-205. — Section 11

of D.C. Law 8-205 provided that the act shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of the act among jurisdictions enacting it.

Editor’s notes. — Uniform Law: This section is based upon § 1 of the Uniform Law on Notarial Acts.

Application of 8-205: Section 10 of D.C. Law 8-205 provided that the act shall apply to any notary act performed on or after the effective date of this act.

§ 42-142. Notarial acts.

(a) In taking an acknowledgment, the notarial officer shall determine from personal knowledge or satisfactory evidence that the person who appears before the officer and makes the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer shall determine from personal knowledge or satisfactory evidence that the person who appears before the officer and makes the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notarial officer shall determine from personal knowledge or satisfactory evidence that the signature is the signature of the person who appears before the officer and is named in the instrument.

(d) A notarial officer shall have satisfactory evidence that a person is the person whose true signature is on a document if the person is:

- (1) Personally known to the notarial officer;
- (2) Identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or
- (3) Identified on the basis of identification documents.

(Mar. 6, 1991, D.C. Law 8-205, § 3, 37 DCR 8444.)

Section references. — This section is referred to in § 42-147.

Prior Codifications. — 1981 Ed., § 45-622.

Legislative history of Law 8-205. — For legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Editor’s notes. — Uniform Law: This section is based upon § 2 of the Uniform Law on Notarial Acts.

§ 42-143. Notarial acts in the District.

(a) A notarial act may be performed within the District by the following persons to the extent authorized by law:

- (1) A notary public of the District;
- (2) A judge, clerk, or deputy clerk of any court of the District; or
- (3) Any other person authorized to perform the specific act.

(b) Notarial acts performed within the District under federal authority as provided in § 42-145 shall have the same effect as if performed by a notarial officer of the District.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(Mar. 6, 1991, D.C. Law 8-205, § 4, 37 DCR 8444.)

Prior Codifications. — 1981 Ed., § 45-623.

Legislative history of Law 8-205. — For legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Law on Notarial Acts.

§ 42-144. Notarial acts in other jurisdictions of the United States.

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District, if the notarial act is performed in another state, commonwealth, territory, district, or possession of the United States by:

- (1) A notary public of the jurisdiction;
- (2) A judge, clerk, or deputy clerk of a court of the jurisdiction; or
- (3) Any other person authorized by the law of the jurisdiction to perform a notarial act.

(b) A notarial act performed in any other jurisdiction of the United States under federal authority as provided in § 42-145 shall have the same effect as if performed by a notarial officer of the District.

(c) The signature and title of a person who performs a notarial act in another jurisdiction are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in subsection (a)(1) or (2) of this section shall establish conclusively the authority of a holder of that title to perform a notarial act.

(Mar. 6, 1991, D.C. Law 8-205, § 5, 37 DCR 8444.)

Prior Codifications. — 1981 Ed., § 45-624.

Legislative history of Law 8-205. — For legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Law on Notarial Acts.

§ 42-145. Notarial acts under federal authority.

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District if the notarial act is performed anywhere under authority granted by the law of the United States by:

- (1) A judge, clerk, or deputy clerk of a court;
- (2) A commissioned officer on active duty in the military service of the United States as provided in 10 U.S.C. § 936;
- (3) An officer of the foreign service or consular officer of the United States as provided in §§ 3 and 7 of An Act To provide for the reorganization of the

consular service of the United States, approved April 5, 1906 (34 Stat. 101; 22 U.S.C. § 4215 passim); or

(4) Any other person authorized by federal law to perform a notarial act.

(b) The signature and title of a person who performs a notarial act under federal authority are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in subsection (a)(1), (2), or (3) of this section shall establish conclusively the authority of a holder of that title to perform a notarial act.

(Mar. 6, 1991, D.C. Law 8-205, § 6, 37 DCR 8444.)

Section references. — This section is referred to in §§ 42-143 and 42-144.

Prior Codifications. — 1981 Ed., § 45-625.

Legislative history of Law 8-205. — For legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Law on Notarial Acts.

§ 42-146. Foreign notarial acts.

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District if the notarial act is performed within the jurisdiction of and under authority of a foreign country or its constituent units or a multi-national or international organization by:

(1) A notary public or notary;

(2) A judge, clerk, or deputy clerk of a court of record; or

(3) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An "Apostille" in the form prescribed by the Convention Abolishing the Requirement of Legalization for Foreign Documents done at the Hague on October 5, 1961 (T.I.A.S. 10073; 527 U.N.T.S. 189), shall conclusively establish that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the country under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of a country who is stationed in the United States, shall establish conclusively any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person who performs the notarial act shall be prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in subsection (a)(1) or (2) of this section shall be prima facie evidence that a person with the indicated title has the authority to perform a notarial act.

(f) If the title of office and indication of authority to perform a notarial act appears in a digest of foreign law or in a list customarily used as a source for

information for foreign law, the authority of an officer with the title to perform a notarial act shall be established conclusively.

(g) For purposes of this section, the term “multi-national or international organization” means an organization defined in 22 U.S.C. § 288.

(Mar. 6, 1991, D.C. Law 8-205, § 7, 37 DCR 8444; Feb. 5, 1994, D.C. Law 10-68, § 36, 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 45-626.

Legislative history of Law 8-205. — For legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first

and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Editor’s notes. — Uniform Law: This section is based upon § 6 of the Uniform Law on Notarial Acts.

§ 42-147. Certificate of notarial acts.

(a) A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of office. If the officer is a notary public, the certificate shall indicate the expiration date, if any, of the commission of office. Omission of the expiration date information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, as provided in 10 U.S.C. § 936, the certificate shall include the officer’s rank and title of office.

(b) A certificate of a notarial act shall be sufficient if the certificate meets the requirements of subsection (a) of this section and:

- (1) Is in the short form set forth in § 42-148;
- (2) Is in a form otherwise prescribed by the law of the District;
- (3) Is in a form prescribed by a law or regulation applicable in the place where the notarial act was performed; or

(4) Sets forth the actions of the notarial officer and those actions that are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by § 42-142.

(Mar. 6, 1991, D.C. Law 8-205, § 8, 37 DCR 8444; Dec. 10, 1991, D.C. Law 9-52, § 2(a), 38 DCR 6585.)

Section references. — This section is referred to in § 42-148.

Prior Codifications. — 1981 Ed., § 45-627.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Uniform Law on Notarial Acts Temporary Amendment Act of 1991 (D.C. Law 9-9, July 13, 1991, law notification 38 DCR 4812).

Legislative history of Law 8-205. — For

legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Legislative history of Law 9-52. — Law 9-52, the “Uniform Law on Notarial Acts Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-214, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 2, 1991, and October 1, 1991, respectively. Signed by the Mayor on October 23,

1991, it was assigned Act No. 9-94 and transmitted to both Houses of Congress for its review.

Editor's notes. — Application of 9-52: Sec-

tion 3 of D.C. Law 9-52 provided that the act shall apply as of March 6, 1991.

Uniform Law: This section is based upon § 7 of the Uniform Law on Notarial Acts.

CASE NOTES

In general.

In the District of Columbia, a power of attorney has to be executed via an acknowledgment

taken and certified by a notary public. McNairy v. Estate of Baxter (In re Baxter), 320 B.R. 30, 2004 Bankr. LEXIS 2184 (2004).

§ 42-148. Short forms.

The following short form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by § 42-147(a).

(1) For an acknowledgment in an individual capacity:

District of Columbia

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
(My commission expires:_____)

(2) For an acknowledgment in a representative capacity:

District of Columbia

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
(My commission expires:_____)

(3) For a verification upon oath or affirmation:

District of Columbia

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
(My commission expires:_____)

(4) For witnessing or attesting a signature:

District of Columbia

Signed or attested before me on (date) by (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

(My commission expires: _____)

(5) Repealed.

(Mar. 6, 1991, D.C. Law 8-205, § 9, 37 DCR 8444; Dec. 10, 1991, D.C. Law 9-52, § 2(b), 38 DCR 6585.)

Section references. — This section is referred to in § 42-147.

Prior Codifications. — 1981 Ed., § 45-628.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Uniform Law on Notarial Acts Temporary Amendment Act of 1991 (D.C. Law 9-9, July 13, 1991, law notification 38 DCR 4812).

Legislative history of Law 8-205. — For

legislative history of D.C. Law 8-205, see Historical and Statutory Notes following § 42-141.

Legislative history of Law 9-52. — For legislative history of D.C. Law 9-52, see Historical and Statutory Notes following § 42-147.

Editor's notes. — Application of Law 9-52: Section 3 of D.C. Law 9-52 provided that the act shall apply as of March 6, 1991.

Uniform Law: This section is based upon § 8 of the Uniform Law on Notarial Acts.

CHAPTER 2. CONSERVATION EASEMENTS.

Sec.	Sec.
42-201. Definitions.	42-203. Persons who may bring actions.
42-202. Exemption from recordation and transfer tax.	42-204. Affected interests.
42-202.01. Rights of the holder of a conservation easement.	42-205. Application and construction of chapter.

§ 42-201. Definitions.

For the purposes of this chapter, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, ensuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Holder" means 1 of the following:

(A) A governmental body empowered to hold an interest in real property under the laws of the District of Columbia or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, ensuring the availability of real property for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

(May 16, 1986, D.C. Law 6-113, § 2, 33 DCR 1996.)

Section references. — This section is referred to in § 42-202.

Prior Codifications. — 1981 Ed., § 45-2601.

Legislative history of Law 6-113. — Law 6-113, the "District of Columbia Uniform Conservation Easement Act of 1986," was introduced in Council and assigned Bill No. 6-55, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 25, 1986, and March 11, 1986, respectively. Signed by the Mayor on March 24, 1986, it was assigned Act No. 6-143 and transmitted to both Houses of Congress for its review.

Editor's notes. — Community Development Block Grant Program: Pursuant to Resolution 6-768, the "Community Development Block Grant Program Resolution of 1986," effective July 8, 1986, the Council authorized the Mayor to revise the proposed final statement to include the homestead housing preservation program as an activity to permit the use of CDBG funds for initial program staff, approved the revised final statement, and authorized the Mayor to submit the revised final statement to HUD.

Uniform Law: This section is based upon § 1 of the Uniform Conservation Easement Act.

CASE NOTES

In general.

Proposal for demolition of building within historic district and rebuilding did not fall within scope of Uniform Conservation Easement Act, so as to support covenant between government and developer for maintenance of residential and day-care services in the new building; covenant was to address continued

existence of housing and day-care, not nature-related or culture-related values provided for in the Act. D.C. Code 1981, § 45-2601 et seq. *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

§ 42-202. Exemption from recordation and transfer tax.

(a)(1) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, provided that the recordation of any conservation easement as defined in § 42-201, or of any assignment, release, modification, termination, or other alteration of a conservation easement shall be exempt from the recordation tax imposed by § 42-1103, and from the transfer tax imposed by § 47-903.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply if the consideration for the conservation easement exceeds \$100 in value.

(b) No right or duty in favor of or against a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in § 42-203(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement is valid even under the following circumstances:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to another holder;
- (3) It is not of a character that has been recognized traditionally at common law;
- (4) It imposes a negative burden;
- (5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) The benefit does not touch or concern real property; or
- (7) There is no privity of estate or of contract.

(May 16, 1986, D.C. Law 6-113, § 3, 33 DCR 1996; Apr. 30, 1988, D.C. Law 7-104, § 25, 35 DCR 147.)

Cross references. — Tax on deeds, imposition and return, see § 42-1103.

Prior Codifications. — 1981 Ed., § 45-2602.

Legislative history of Law 6-113. — For

legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill

No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned

Act No. 7-124 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon §§ 2 and 4 of the Uniform Conservation Easement Act.

§ 42-202.01. Rights of the holder of a conservation easement.

Whenever a recorded conservation easement has been registered with the Mayor, written consent of the holder of the registered and recorded conservation easement shall be required prior to the recordation of a subdivision by the Office of the Surveyor, and to the issuance of a permit for construction, demolition, alteration, or repair, except solely for interior work. With respect to the affected property, a conservation easement shall be deemed registered with the Mayor 10 days after proof of a recorded conservation easement is presented to the Historic Preservation Division of the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs.

(May 16, 1986, D.C. Law 6-113, § 3a, as added Mar. 17, 1993, D.C. Law 9-233, § 2, 40 DCR 603.)

Prior Codifications. — 1981 Ed., § 45-2602.1.

Legislative history of Law 9-233. — Law 9-233, the "District of Columbia Uniform Conservation Easement Act of 1986 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-122, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-364 and transmitted to both Houses of Congress for its review. D.C. Law 9-233 became effective on March 17, 1993.

§ 42-203. Persons who may bring actions.

(a) An action affecting a conservation easement may be brought by 1 of the following:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(May 16, 1986, D.C. Law 6-113, § 4, 33 DCR 1996.)

Section references. — This section is referred to in § 42-202.

Prior Codifications. — 1981 Ed., § 45-2603.

Legislative history of Law 6-113. — For

legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Conservation Easement Act.

§ 42-204. Affected interests.

(a) This chapter applies to any interest created after May 16, 1986, which

complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before May 16, 1986, if it would have been enforceable had it been created after May 16, 1986, unless retroactive application contravenes the laws of the District of Columbia or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement, a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of the District of Columbia.

(d) Repealed.

(e)(1) The deduction of a qualified conservation contribution as claimed under section 170 of the Internal Revenue Code of 1986 [26 U.S.C. § 170] shall be allowed under § 47-1803.03.

(2) The conservation easement shall qualify as a qualified conservation contribution notwithstanding the inclusion of a provision in the easement that permits the creation of a lien on behalf of the holder of a conservation easement for the purposes of enforcing the easement, which lien does not have precedence over other lienholders, mortgagees, or holders of a deed of trust.

(3) This subsection shall apply to all instruments recorded at the Recorder of Deeds.

(May 16, 1986, D.C. Law 6-113, § 5, 33 DCR 1996; Oct. 1, 2002, D.C. Law 14-190, § 902, 49 DCR 6968; Apr. 4, 2003, D.C. Law 14-282, §§ 12, 13, 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-2604.

Effect of amendments. — D.C. Law 14-190 added subsec. (d).

D.C. Law 14-282 repealed subsec. (d); and added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 14 of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 902 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 13 of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see §§ 13(a) and 14 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 6-113. — For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support

Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 14-282. — Law 14-282, the “Tax Clarity and Recorder of Deeds Act of 2002”, was introduced in Council and assigned Bill No. 14-537, which was referred to Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-616 and transmitted to both Houses of Congress for its review. D.C. Law 14-282 became effective on April 4, 2003.

Short title. — Short title of title IX of Law 14-190: Section 901 of D.C. Law 14-190 provided that title IX of the act may be cited as the Conservation Easement Deed of Gift Clarification Amendment Act of 2002. This title was repealed by D.C. Law 14-282.

References in text. — Section 170 of the Internal Revenue Code of 1986, referred to in subsec. (e), is classified to 26 U.S.C. § 170.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Conservation Easement Act.

§ 42-205. Application and construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the chapter among states enacting it.

(May 16, 1986, D.C. Law 6-113, § 6, 33 DCR 1996.)

Prior Codifications. — 1981 Ed., § 45-2605.

Legislative history of Law 6-113. — For legislative history of D.C. Law 6-113, see Historical and Statutory Notes following § 42-201.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Conservation Easement Act.

CHAPTER 3. CONVEYABLE ESTATES AND METHODS OF CONVEYANCE.

Sec.

42-301. Present or future and vested or contingent interests conveyed by deed or will.

42-302 to 42-304. [Repealed].

42-305. Title conveyable by anyone claiming such.

Sec.

42-306. Deed or will necessary for more than one-year term or for limitation upon such.

42-307. [Repealed].

§ 42-301. Present or future and vested or contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise may be created by deed.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 512; June 30, 1902, 32 Stat. 532, ch. 1329.)

Cross references. — Statute of frauds, see §§ 28-3501 and 28-3503.

Prior Codifications. — 1981 Ed., § 45-301. 1973 Ed., § 45-101.

Editor's notes. — Severance of joint tenan-

cies: This section and § 42-305 do not supersede the common law rule authorizing the unilateral severance of joint tenancies. *Estate of Gullledge*, App. D.C., 673 A.2d 1278 (1996).

CASE NOTES

ANALYSIS

In general.

Joint tenancy.

In general.

An agreement between husband and wife, whereby wife promised to create in favor of certain children, upon death of husband, an estate in property held by husband and wife as tenants by the entirety, did not meet the requirements of a "deed", and no estate or interest was conveyed thereby. D.C. Code 1940, §§ 45-106, 45-301. *Schooler v. Schooler*, 173 F.2d 299, 1948 U.S. App. LEXIS 2005 (C.A.D.C. 1948).

Where testatrix devised realty to her daughter for life and then to testatrix' three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. D.C. Code 1940, §§ 45-101, 45-814, 45-815. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Where remainderman's interest was subject to be divested in event of his death, leaving a descendant, prior to death of life tenant, re-

mainderman's assignment of his interest was ineffective as against his descendant on death of remainderman prior to death of the life tenant. D.C. Code 1940, § 45-101. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Fee-simple title to realty cannot be lost by abandonment, laches, or estoppel; but, once title vests, it stays vested until it passes by grant, descent, adverse possession, or some operation of law such as escheat or forfeiture. *Faulks v. Schrider*, 99 F.2d 370, 1938 U.S. App. LEXIS 2881 (1938).

Conveyance of house by husband's parents, by deed to themselves and husband with express intent to make gift of house to husband and wife as "wedding gift" prior to wedding which was cancelled six years before couple's marriage, was sufficient for delivery and absolute disposition of either present or future interest in house to wife, subject to special limitation, condition subsequent, or executory limitation. D.C. Code 1981, §§ 45-210, 45-211, 45-212, 45-301. *Singer v. Singer*, 636 A.2d 422, 1994 D.C. App. LEXIS 3 (1994).

Joint tenancy.

Testator's transfer, during his lifetime, of his undivided one-half interest in joint tenancy was not subject to other joint tenant's right of

survivorship, and therefore such transfer severed joint tenancy such that other joint tenant and transferee of testator's interest held property as tenants in common. Estate of Gullledge, 673 A.2d 1278, 1996 D.C. App. LEXIS 55 (1996).

Transfer of interest in joint tenancy by either joint tenant will sever joint tenancy and cause share conveyed to become property held as tenants in common with other cotenants. Es-

tate of Gullledge, 673 A.2d 1278, 1996 D.C. App. LEXIS 55 (1996).

Payment of consideration for undivided one-half interest in joint tenancy, without any contract independent of deed creating joint tenancy, did not create in purchaser right of survivorship which other joint tenant could not terminate by transferring his interest in joint tenancy. Estate of Gullledge, 673 A.2d 1278, 1996 D.C. App. LEXIS 55 (1996).

§ 42-302. Perpetuities — Charitable uses excepted. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1023; Apr. 27, 2001, D.C. Law 13-292, § 403, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 45-302. 1973 Ed., § 45-102.

§ 42-303. Perpetuities—Chattels real. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1024; Apr. 27, 2001, D.C. Law 13-292, § 403, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 45-303. 1973 Ed., § 45-103.

§ 42-304. Perpetuities—Effect upon estates created by deed or will. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1025; Apr. 27, 2001, D.C. Law 13-292, § 403, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 45-304. 1973 Ed., § 45-104.

§ 42-305. Title conveyable by anyone claiming such.

Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 513.)

Prior Codifications. — 1981 Ed., § 45-305. 1973 Ed., § 45-105.

Editor's notes. — Severance of joint tenancies: This section and § 42-301 do not super-

sede the common law rule authorizing the unilateral severance of joint tenancies. Estate of Gullledge, App. D.C., 673 A.2d 1278 (1996).

CASE NOTES

In general.

Transfer of interest in joint tenancy by either joint tenant will sever joint tenancy and cause share conveyed to become property held as

tenants in common with other cotenants. *Estate of Gullledge*, 673 A.2d 1278, 1996 D.C. App. LEXIS 55 (1996).

§ 42-306. Deed or will necessary for more than one-year term or for limitation upon such.

(a) For the purposes of this section, “commercial lease” means a lease for nonresidential real property.

(b) Except as provided in subsection (c) of this section, no estate of inheritance, or for life, or for a longer term than 1 year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, in person or by power of attorney or by will.

(c) Commercial leases for a longer term than 1 year in any real property in the District of Columbia may be signed on behalf of the owner of real property by an authorized agent.

(Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 492; June 30, 1902, 32 Stat. 531, ch. 1329; June 11, 1992, D.C. Law 9-116, § 2, 39 DCR 3186; Apr. 27, 1994, D.C. Law 10-110, § 2(a), 41 DCR 1023.)

Cross references. — Effective date of deeds, see § 42-401.

Statute of frauds, see §§ 28-3501, 28-3503.

Prior Codifications. — 1981 Ed., § 45-306. 1973 Ed., § 45-106.

Legislative history of Law 9-116. — Law 9-116, the “Real Property Lease Authorization Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-129, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-190 and transmitted to

both Houses of Congress for its review. D.C. Law 9-116 became effective on June 11, 1992.

Legislative history of Law 10-110. — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

CASE NOTES

ANALYSIS

Authority of agent.

Construction of instrument.

In general.

Statute of frauds.

Validity of leases.

Authority of agent.

Under District of Columbia law, non-profit organization’s interest in real property was not defeasible by donors’ exercise of reversion clause in grant agreement, and thus donors took title to property subject to organization’s

leasehold interest in property, where donors never had direct interest in property before it was conveyed to organization, but only had contractual right to receive property if museum was not substantially completed by organization, and deed conveying property from third party vendor contained no reference to any conditions that would make fee interest defeasible. *Armenian Assembly of Am., Inc. v. Cafesjian*, 811 F.Supp.2d 120, 2011 U.S. Dist. LEXIS 103693 (2011).

Under District of Columbia law, lease of space for installation and operation of coin-operated laundry equipment was limited to one

year, as it was not signed by owners of property, but rather, by owners' agent, which managed property. D.C. Code 1981, § 45-306. *Solon Automated Services, Inc. v. Borger Management, Inc.*, 742 F. Supp. 1178, 1990 U.S. Dist. LEXIS 11420 (1990), amended by 742 F. Supp. 1181, 1990 U.S. Dist. LEXIS 16295 (D.D.C. 1990), affirmed without opinion by 917 F.2d 62, 286 U.S. App. D.C. 348 (1990).

Under District of Columbia law, landlord was not equitably estopped from arguing that five-year lease, which provided for automatic renewal if notice of termination were not timely given, was limited to one year due to fact that lease was not signed by owners but, instead, was signed by their agent; lessee's estoppel argument went to whether it reasonably relied on lease running for initial five-year term, which did not form basis for its suit. D.C. Code 1981, § 45-306. *Solon Automated Services, Inc. v. Borger Management, Inc.*, 742 F. Supp. 1178, 1990 U.S. Dist. LEXIS 11420 (1990), amended by 742 F. Supp. 1181, 1990 U.S. Dist. LEXIS 16295 (D.D.C. 1990), affirmed without opinion by 917 F.2d 62, 286 U.S. App. D.C. 348 (1990).

Under District of Columbia law, life of lease is limited to one year unless signed by actual owner. D.C. Code 1981, § 45-306. *Solon Automated Services, Inc. v. Borger Management, Inc.*, 742 F. Supp. 1178, 1990 U.S. Dist. LEXIS 11420 (1990), amended by 742 F. Supp. 1181, 1990 U.S. Dist. LEXIS 16295 (D.D.C. 1990), affirmed without opinion by 917 F.2d 62, 286 U.S. App. D.C. 348 (1990).

Where rental agent executed a lease to owner's property for term of more than one year, such lease was ineffectual beyond one-year period even though agent had authority from owner to execute it, as such a lease was an attempt by an agent to convey an owner's interest in real estate and was prohibited by statute. D.C. Code 1951, §§ 45-106, 45-401. *Paul v. Holloway*, 124 A.2d 587, 1956 D.C. App. LEXIS 213 (Cr.App. 1956).

Construction of instrument.

Lease termination provision was unambiguous and required that the lease be assigned or the premises sublet and that the landlord have contracted to sell the building before the landlord could terminate the lease; the termination provision was not made equivocal merely by its double use of the words "in the event." *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 2006 D.C. App. LEXIS 626 (2006).

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgement the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied statute requiring that a lease shall be evi-

denced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. D.C. Code 1951, §§ 12-301, 45-106. *Paul v. Holloway*, 124 A.2d 587, 1956 D.C. App. LEXIS 213 (Cr.App. 1956).

Where body of lease properly designated corporate lessor and individual lessee as such, transposition in attestation clause of words lessee and lessor in such manner as to make clause indicate that individual lessee was the corporation did not invalidate the lease, since intent of parties was perfectly apparent from entire lease, and transposition was mere clerical error. D.C. Code 1951, §§ 45-106, 45-301. *Capital Linoleum Co. v. Savage*, 91 A.2d 564, 1952 D.C. App. LEXIS 213 (Cr.App. 1952).

In general.

An agreement between husband and wife, whereby wife promised to create in favor of certain children, upon death of husband, an estate in property held by husband and wife as tenants by the entirety, did not meet the requirements of a "deed", and no estate or interest was conveyed thereby. D.C. Code 1940, §§ 45-106, 45-301. *Schooler v. Schooler*, 173 F.2d 299, 1948 U.S. App. LEXIS 2005 (C.A.D.C. 1948).

District of Columbia statute providing that no estate of inheritance in any real property shall be created or take effect except by deed signed and sealed by grantor, lessor, or declarant, or by will applies to legal and not equitable title. D.C. Code 1981, § 45-306. *SMS Assocs. v. Clay*, 868 F. Supp. 337, 1994 U.S. Dist. LEXIS 17185 (1994), affirmed without opinion by 70 F.3d 638, 315 U.S. App. D.C. 77, 1995 U.S. App. LEXIS 39224 (1995).

Where husband entered into two pre-divorce agreements conveying his interest in entireties property to wife, such transfers were effective under District of Columbia law despite lack of deed; if notarization of first agreement did not suffice to make it a "sealed" document, acknowledgment of first agreement in second agreement and in parties' divorce judgment was sufficient to take agreement outside statute of frauds. D.C. Code 1981, § 45-306(b). *Webster v. Hope (In re Hope)*, 231 B.R. 403, 1999 Bankr. LEXIS 197 (1999).

Testimony by personal representative of estate of house's owner, that owner's daughters had an informal agreement that one particular daughter would live in their mother's house, was insufficient to establish that the daughter in question had a life estate in the house, for purposes of establishing daughter's standing to sue contractor for damages to real property allegedly caused by contractor's negligence in repairing damage from fire. *Robinson v. Samuel C. Boyd & Son, Inc.*, 822 A.2d 1093, 2003 D.C. App. LEXIS 280 (2003).

Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. *American Sec. Bank v. Cummings*, 120 WLR 88 (Super. Ct. 1992).

Statute of frauds.

Equity will specifically enforce contract invalid under statute of frauds, where complaining party, on faith of contract, has materially altered his position, commencing case to discretion of chancellor. *Hoffman v. F.H. Duehay, Inc.*, 65 F.2d 839, 1933 U.S. App. LEXIS 3181 (1933).

Where lessor remodeled office rooms for physician at considerable expense, and lessee remained in possession for more than two years, lessor held entitled to specific performance of three-year lease contract, notwithstanding lease was unenforceable under statute of frauds because not under seal (D.C. Code 1929, T. 25, § 116). *Hoffman v. F.H. Duehay, Inc.*, 65 F.2d 839, 1933 U.S. App. LEXIS 3181 (1933).

While the statute of frauds is equally binding upon courts of equity and courts of law, its requirements will be relaxed in equity where to enforce the statute will make it an instrument of fraud. *Kresge v. Crowley*, 47 App.D.C. 13, 1917 U.S. App. LEXIS 2588 (1917).

A parol contract concerning land will be enforced in equity, notwithstanding the statute of frauds, where the party seeking enforcement has been induced to alter his position on the faith of the contract to such an extent that it would be a fraud to plead its invalidity, and where the acts of part performance have been clearly such as to show they are referable to the contract. *Kresge v. Crowley*, 47 App.D.C. 13, 1917 U.S. App. LEXIS 2588 (1917).

Where, on reliance upon a parol agreement for a lease for more than one year and a lease embodying such agreement, but executed not by the lessor but by his attorney, the tenant entered into possession and expended large sums of money, equity, at the suit of the tenant, will enforce the agreement, notwithstanding the invalidity of the lease under Code of Law 1901, § 492, and Code §§ 498, and 1116. D.C. Code 1929, T. 25, § 150 and T. 11, § 1. *Kresge v. Crowley*, 47 App.D.C. 13, 1917 U.S. App. LEXIS 2588 (1917).

Operation of statute of frauds, with respect to ten-year lease which was not signed by landlord as required by law, was precluded on ground of part performance, where tenant occupied building for nearly three years and paid rent, and landlord renovated the building in reliance on the lease and in accordance with tenant's specifications. D.C. Code 1981, § 45-306. *District of Columbia Hous. Fin. Agency v. Harper*, 707 A.2d 53, 1998 D.C. App. LEXIS 26 (1998).

Noncompliance with statute of frauds may be rendered inconsequential on basis of equitable

estoppel where party's own fraud is responsible for noncompliance, on basis of promissory estoppel where doctrine of past performance applies, or on basis of waiver where party has admitted to the contract. D.C. Code 1981, § 45-306. *District of Columbia Hous. Fin. Agency v. Harper*, 707 A.2d 53, 1998 D.C. App. LEXIS 26 (1998).

Noncompliance with statute of frauds may be rendered inconsequential on basis of equitable estoppel where party's own fraud is responsible for noncompliance, or on the basis of promissory estoppel where the doctrine of past performance applies, or on the basis of waiver where the party has admitted to the contract. D.C. Code 1981, § 45-306. *Tauber v. District of Columbia*, 511 A.2d 23, 1986 D.C. App. LEXIS 355 (1986).

Operation of statute of frauds, with respect to 20-year lease which was not executed under seal as required by law, was precluded on ground of waiver where the parties had executed the lease and the party relying on statute of frauds admitted that, had he known of the defect, he would have cured it, and the parties admitted in pleadings, stipulations and at trial that there was a lease for term of years which had been in effect for almost six years. D.C. Code 1981, § 45-306. *Tauber v. District of Columbia*, 511 A.2d 23, 1986 D.C. App. LEXIS 355 (1986).

An alleged parol agreement by lessor to give lessees after expiration of lease an additional five-year term was not enforceable in absence of evidence of lessor's fraud or execution of the agreement, in view of the statute specifying the requirements for a lease for longer than one year and the statute of frauds provision that such a lease shall be an estate by sufferance. D.C. Code 1940, §§ 12-301, 45-106. *Ross v. Brainerd*, 54 A.2d 859, 1947 D.C. App. LEXIS 166 (Cr.App. 1947).

Validity of leases.

Lease signed and sealed in corporate lessor's name held valid as between parties, though not acknowledged nor containing power of attorney to acknowledge instrument. Code, § 492, as amended by Act June 30, 1902, and § 497 (D.C. Code 1929, T. 25, § 116 and § 142). *Munsey Trust Co. v. Alexander, Inc.*, 42 F.2d 604, 1930 U.S. App. LEXIS 4314 (1930).

Under Code D.C. §§ 492, 498 (D.C. Code 1929, T. 25, §§ 116, 150) providing respectively that no estate for a longer term than one year in any real property in the District of Columbia shall be created or take effect except by deed signed and sealed by the grantor, lessor, or declarant, and that no deed of conveyance shall be executed or acknowledged by attorney, an eight-year lease of premises by a life tenant, having one-half interest only, to which the owners subject to the life estate are not parties,

and which does not purport to convey their interests, is only the personal conveyance of the life tenant, although such owners had full knowledge of its execution and acquiesced in and ratified the acts of their cotenant. *Velati v. Dante*, 39 App.D.C. 372, 1912 U.S. App. LEXIS 2238 (1912).

Assuming the power of a life tenant to act for herself under the instrument creating the trust estate, she can only convey her own interest by a lease thereof. *Velati v. Dante*, 39 App.D.C. 372, 1912 U.S. App. LEXIS 2238 (1912).

In the absence of anything to show authority in one tenant in common of an equitable trust estate to act as trustee for her cotenants in making a lease, the existence of such authority cannot be presumed; and, in the absence of such authority, no amount of acquiescence on the part of the cotenants, they having failed to execute the lease themselves as required by sections 492 and 498, Code D.C. (D.C. Code 1929, T. 25, §§ 116, 150), will authorize the life tenant to lease the entire property, creating therein an estate beyond her life; and the rights, if any, acquired through such lease, expire with her. *Velati v. Dante*, 39 App.D.C. 372, 1912 U.S. App. LEXIS 2238 (1912).

Acceptance of rents from the lessee of a life tenant after the latter's death does not estop the remainderman from defending against a covenant of renewal contained in the life tenant's lease, since in this District the action of the remainderman in this respect creates at most a tenancy by sufferance (Code D.C. § 1034, see D.C. Code 1929, T. 25, § 280), which may be terminated by the landlord giving notice in writing to quit (Code D.C. § 1221

[D.C. Code 1929, T. 25, § 314]). *Velati v. Dante*, 39 App.D.C. 372, 1912 U.S. App. LEXIS 2238 (1912).

Commercial lease, which was signed and sealed by landlord, constituted a deed and was presumed to be authentic, and thus, termination provision in lease was enforceable in the absence of clear and convincing evidence that the document was fabricated or altered to limit the extent to which lease could be terminated in order to defraud landlord's widow. *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 2006 D.C. App. LEXIS 626 (2006).

Five-year commercial lease was enforceable although only one of three co-owners had signed lease since co-owner who signed lease could effectively convey his undivided interest for a term of years. D.C. Code 1981, §§ 45-306, 45-601. *Washington Ins. Agency, Inc. v. Friedlander*, 487 A.2d 599, 1985 D.C. App. LEXIS 319 (1985).

A lease for more than a year must be in the form of a deed, signed and sealed by grantor, but there is no requirement that a lease for less than year be under seal. D.C. Code 1951, §§ 12-301, 45-106. *Binder v. Jaffe*, 101 A.2d 260, 1953 D.C. App. LEXIS 196 (Cr.App. 1953).

A written six months' extension agreement which was entered into by lessor and lessees before expiration of five-year lease, and which did not create or purport to create a new estate, and which made no change in original lease except to fix new expiration date was valid although not under seal, and lessees would not be entitled to thirty-day notice to quit as tenants at sufferance. D.C. Code 1951, §§ 12-301, 45-106. *Binder v. Jaffe*, 101 A.2d 260, 1953 D.C. App. LEXIS 196 (Cr.App. 1953).

§ 42-307. Perpetuities; pensions and employee trusts excepted. [Repealed].

Repealed.

(Aug. 25, 1959, 73 Stat. 428, Pub. L. 86-201, § 1; Apr. 27, 2001, D.C. Law 13-292, § 403, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 45-307.

1973 Ed., § 45-107.

CHAPTER 4. DEED EFFECTIVE AND RECORDATION DATES.

Sec.

- 42-401. Effective date of deeds; exception.
 42-402. Defective grants recorded before April 27, 1994.
 42-403. Defective grants recorded on or after April 27, 1994.
 42-404. Failures in formal requisites of an instrument.
 42-405. Notice of address and name change.
 42-406. First recorded deed preferred.

Sec.

- 42-407. Instrument not properly executed or acknowledged not recordable.
 42-408. Record of conveyance by infant or infant trustee as evidence.
 42-409. Bonds and contracts relating to land recordable.
 42-410. Map or plat of subdivisions not recordable.

§ 42-401. Effective date of deeds; exception.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in §§ 42-101, 42-121 to 42-123 [repealed], 42-306, and 42-602 and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the Recorder of Deeds for record.

(Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329.)

Cross references. — Horizontal property regimes, record defined, see § 42-2002.

Recording instrument by one who has no color of title, penalties, see § 22-1402.

Prior Codifications. — 1981 Ed., § 45-801.

1973 Ed., § 45-501.

References in text. — Sections 42-121 to 42-123, referred to in this section, were repealed March 6, 1991, by § 12(a) of D.C. Law 8-205.

CASE NOTES

ANALYSIS

Actual or constructive notice.
 Bona fide purchasers.
 Creditors defined.
 Delivery.
 Equitable liens.
 Errors in instruments or recording.
 In general.
 Judgment liens.
 Possession of deed.
 Recording and registration.
 Time of taking effect.

Actual or constructive notice.

Where trustees released deed of trust securing note held by bank, recording of release did not give such "constructive notice" to bank or its receiver as would start running of limitations against action to recover damages from the trustees individually for alleged wrongful release. D.C. Code 1929, T. 25, §§ 171, 191. *Young v. Howard*, 120 F.2d 712, 1941 U.S. App. LEXIS 3530 (1941).

The recording of a deed of trust is not constructive notice to anyone that the grantor, at the time a stranger to the record title, was the grantee in a prior and unrecorded deed. *Crosby v. Ridout*, 27 App.D.C. 481, 1906 U.S. App. LEXIS 5193 (1906).

The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one. *Clark v. Harmer*, 5 App.D.C. 114, 1895 U.S. App. LEXIS 3533 (1895).

Under District of Columbia law, party may choose to rely on indexing information if it so chooses, but it does not have any right to do so and cannot plead error in index as defense to constructive notice of contents of deed of trust that is within its grantor's chain of title. D.C. Code 1981, §§ 45-701, 45-801. *Harris v. Maryland Nat'l Bank (In re Harris)*, 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist.

LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Recordation of deed of trust provides constructive notice to subsequent purchasers or lienors of all matters that would be disclosed by examination of that deed of trust. D.C. Code 1981, §§ 45-701, 45-801. *Harris v. Maryland Nat'l Bank* (In re *Harris*), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Pending suit provided constructive notice of foreclosure sale, such as might defeat rights of bona fide purchaser or judicial lien creditor, only to those who were party to suit or in privity therewith. Bankr.Code, 11 U.S.C. § 544(a)(1, 3); D.C. Code 1981, § 45-801. In re *Leonard*, 63 B.R. 261, 1986 Bankr. LEXIS 5848 (1986).

Purchaser who conducts a proper title search is fully protected against all unrecorded interests falling within the recording statute, with exception of any as to which purchaser had actual or inquiry notice; integrity of recording system dictates that such notice must be clearly shown, and it is claimant of unrecorded interest who bears the burden of proof to show that purchaser from the record title holder was on such notice. D.C. Code 1981, § 45-801. *Clay Properties, Inc. v. Washington Post Co.*, 604 A.2d 890, 1992 D.C. App. LEXIS 75 (1992).

Bona fide purchasers.

Where vendor conveyed property and purchaser without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing in deeds of trust against the property, fraud in relationship between the vendor and the purchaser did not give vendor a claim superior to that of the trust holders, who occupied the position of bona fide purchasers. D.C. Code 1951, §§ 45-501, 45-601. *Osin v. Johnson*, 243 F.2d 653, 1957 U.S. App. LEXIS 2976 (C.A.D.C. 1957).

Unrecorded trust agreements were not effective against subsequent bona fide purchaser without notice of outstanding claims of third parties under the deeds. D.C. Code 1981, § 45-801. *Kayfirst Corp. v. Washington Terminal Co.*, 813 F. Supp. 67, 1993 U.S. Dist. LEXIS 1331 (1993).

Under District of Columbia law, when equitable lien is not recorded, it would not be effective against bona fide purchaser or judgment creditor who acquired interest in property without notice of that equitable lien. D.C. Code 1981, § 45-801. *Sovran Bank v. United States* (In re *Aumiller*), 168 B.R. 811, 1994 Bankr. LEXIS 951 (1994).

Creditors defined.

Under Code, § 499, D.C. Code 1929, T. 25, § 171, providing that, as to creditors and sub-

sequent bona fide purchasers and mortgagees without notice, a deed shall only take effect from the time of its delivery to the recorder of deeds for record, "creditors" includes judgment creditors. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

Code, § 499, D.C. Code 1929, T. 25, § 171, making unrecorded deeds ineffective as against creditors, applies only to creditors who extend credit or secure judgment while the record title remained in the debtor, and did not apply to the failure to record a deed, where the judgments against the grantor were obtained before he obtained title. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

Code D.C. § 1214, 31 Stat. 1381, provides that "every final judgment at common law from the date when the same shall be rendered. . . shall be a lien on all the freehold and leasehold estates, legal and equitable of the defendants, bound by said judgment. . . in any lands. . . whether such estates be in possession or be reversions or remainders vested or contingent." Section 1082, D.C. Code 1929, T. 24, § 279, provides for the levy of execution "on all legal leasehold and freehold estates of the debtor in land." Section 499, as amended by Act June 30, 1902, c. 1329, 32 Stat. 531, D.C. Code 1929, T. 25, § 171, provides that any deed delivered to the person in whose favor it is executed shall take effect from the date of the delivery "except that as to creditors and subsequent bona fide purchasers and mortgagors without notice of said deed and others interested in said property it shall only take effect from the time of its delivery to the recorder of deeds for record." Held that where a party buys land from another who has the legal title which is subject to an unrecorded and secret trust, and the seller retains the deed under a promise to record it, which he fails to keep, and several years afterward judgments are rendered against the seller in favor of parties without notice of the sale, the lien of the judgment is superior to the equitable lien of the purchaser, and the latter cannot maintain a suit in equity to remove from the land the cloud of the judgment liens. *American Savings Bank v. Eisminger*, 35 App.D.C. 51, 1910 U.S. App. LEXIS 5864 (1910).

The judgment lien conferred by Code D.C. § 1214, 31 Stat. 1381, upon the property interests of the judgment debtor, extends to all lands held by him under apparently perfect legal title at the time of the rendition of the judgment, notwithstanding they are subject to some secret trust capable of being placed upon record. *American Savings Bank v. Eisminger*, 35 App.D.C. 51, 1910 U.S. App. LEXIS 5864 (1910).

The creditors mentioned in Code, § 499, 31 Stat. 1268, c. 854, providing that deeds of real estate shall take effect from the delivery, except

as to creditors and bona fide purchasers without notice, as to whom they take effect from date of delivery for record, are creditors who in the interval of time have fastened on the property for the payment of their debts, and not general creditors. *Crosby v. Ridout*, 27 App.D.C. 481, 1906 U.S. App. LEXIS 5193 (1906).

Delivery.

Evidence that, on a conveyance in trust, the deed was received and kept by the trustee for a time, and then delivered to his cestui que trust, is proof that the deed was delivered and the trusteeship accepted. *Hitz v. National Metropolitan Bank*, 4 S.Ct. 613, 1884 U.S. LEXIS 1828 (U.S. Dist. Col. 1884).

Evidence as to intention of husband and wife in executing instrument whereby wife promised to create certain estates in favor of children, upon death of husband, in property jointly owned by husband and wife was insufficient to prove a constructive delivery to the children, in view of the presumption of non-delivery arising by reason of the instrument remaining in the possession of the makers. *D.C. Code 1940, § 45-501. Schooler v. Schooler*, 173 F.2d 299, 1948 U.S. App. LEXIS 2005 (C.A.D.C. 1948).

Where plaintiff, in purchasing land, had the deed made to C., who conveyed to R., who in turn conveyed to plaintiff, and the deeds to R. and plaintiff were executed before delivery of the deed to C., the instant the legal title passed to C. by delivery of the deed, it passed to plaintiff by force of the covenants for further assurance contained in the deeds to R. and from R. to him. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

Where the question in an action of ejectment is whether a deed of real estate, manually delivered by the grantor to the grantee was actually delivered so as to pass title, it is error for the trial court to charge the jury that they may consider, not only the acts and conduct of the grantor as tending to show his intent, but also the acts and conduct of the grantee after the delivery of the deed, such as his failure to record the deed, and permitting the grantor to pay taxes on the property conveyed, collect the rents, and make repairs, as the intent of the parties is to be determined by what occurred at the time of the transaction. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

Where there is doubt as to whether a deed of real estate was delivered, evidence of the previous making of a will by the grantor in favor of the grantee, its destruction, and the substitution therefor of the deed is admissible as a circumstance tending to show the intent of the grantor as to the delivery of the deed. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

It is error for the trial court to refuse to direct a verdict for the plaintiff in an action of ejectment where the question is as to the delivery of the deed under which the plaintiff claims title, when the uncontradicted testimony shows that the deed was duly executed and acknowledged and manually delivered to the grantee by the grantor, an old colored servant of the grantee's family, who had no children or near kin; and there is nothing to show that the grantee obtained possession of the deed by improper means, and when the defense is based solely on the fact that the deed was not recorded by the grantee until the grantor's death several years after its delivery, during which time the grantor remained in possession and control of the property conveyed. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

Possession alone of a deed by the grantee is prima facie evidence of its delivery; and this presumption of delivery based on possession is so strong that it can only be overcome by clear and convincing proof that there was no delivery. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

The fact that a deed once delivered is withheld from record for a long period, or until the death of the grantor, either at, or without, the request of the latter, has no effect to impair its effect as a conveyance of title, or to operate any extinguishment; nor can the additional fact that the grantor retains possession and control of the property conveyed defeat the legal consequences of the actual delivery of the deed; but such circumstances, if unexplained, would have weight in determining whether there had been an actual delivery, where there is evidence of circumstances tending to raise a doubt whether there was in fact such a delivery, or whether it came properly into the possession of the grantee at the time, or subsequently. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

A deed cannot be delivered to the grantee upon a condition not expressed in the instrument. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

A trust deed of real estate, whereunder the grantor retains a beneficial life estate in the property and its proceeds, cannot be held to have been revoked by a letter from the grantor to the trustee written several years after the delivery of the deed, where the trustee replied to the letter refusing to cancel or annul the trust on the ground that it had been duly accepted and the cestui que trust had become vested with certain rights which the trustee

could not destroy, and might be held answerable for, and suggesting a way to accomplish her desire which the grantor failed to act on. *Bunten v. American Sec. & Trust Co.*, 25 App.D.C. 226, 1905 U.S. App. LEXIS 5268 (1905).

The record of a deed is not essential to delivery, even though it be withheld from record by agreement of the parties. *Bunten v. American Sec. & Trust Co.*, 25 App.D.C. 226, 1905 U.S. App. LEXIS 5268 (1905).

Where conveyances are duly executed, and are found in the hands of the grantee, it is presumed they were duly delivered. *Carusi v. Savary*, 6 App.D.C. 330, 1895 U.S. App. LEXIS 3594 (1895).

As between the grantor and grantee in a deed, the question of delivery is one to be determined by a fair preponderance of evidence; but, where rights of third persons have intervened, the proof of nondelivery should be clear beyond a reasonable doubt; and in many cases the grantor will be estopped from denying the delivery. *Carusi v. Savary*, 6 App.D.C. 330, 1895 U.S. App. LEXIS 3594 (1895).

Possession of a deed by a person who claims under it is prima facie evidence of the delivery of the instrument, and throws upon the maker the burden of proving that it was never delivered. *Carusi v. Savary*, 6 App.D.C. 330, 1895 U.S. App. LEXIS 3594 (1895).

Where an unrecorded deed, to become void if a certain contingency should not happen within a given time, was deposited in a safe-deposit box, to which both grantor and grantee had access, and the grantee, before the expiration of the time limited, abstracted the deed from the box, and used it to procure a loan secured by deed of trust upon the property, it was held that the grantor was estopped to deny the delivery of the deed and its validity to support the loan. *Carusi v. Savary*, 6 App.D.C. 330, 1895 U.S. App. LEXIS 3594 (1895).

Equitable liens.

Land in the possession of the true owners, as established by their successful prosecution of ejectment actions, which were pending when the defendant executed a deed of trust of the property, duly recorded to secure a loan of money to be used in erecting improvements thereon, cannot be subjected at the suit of the mortgagee, to an equitable lien for the value of such improvements, on the theory that such owners were charged with the duty of active investigation to discover from what source the money used in the improvements was obtained and on what security, where the mortgagee, even if unaware of the pendency of the ejectment actions, had knowledge that a suit in equity, raising the question of the mortgagor's title to the premises, had been begun, and dismissed for want of prosecution, without prej-

udice. *Crosby v. Ridout*, 27 App.D.C. 481, 1906 U.S. App. LEXIS 5193 (1906).

Where defendant in ejectment mortgages the land, and with the proceeds erects improvements thereon, the mortgagee cannot, after the ejectment suits have resulted in the eviction of the mortgagor, successfully maintain a suit in equity to subject the land in the possession of the true owners to an equitable lien for such improvements, on the ground that they had constructive notice by the record of the mortgage that it was the money of the mortgagee that was used in the improvement of the land, and that they failed to notify the mortgagee of their title or warn him of the fraud that was being perpetrated on him by the mortgagor. *Armstrong v. Ashley*, 22 App.D.C. 368, 1903 U.S. App. LEXIS 5541 (1903).

Errors in instruments or recording.

While, if the recorder of deeds fails to correctly transcribe a deed filed for record, so that a person afterwards dealing with the property covered by the deed is misled, the parties in interest are bound by the record, rather than by the original deed, there is no record of a declaration or amended declaration in ejectment other than by its filing; and the original paper itself becomes the record and speaks for itself, and one who would accurately know its contents must have recourse to the document itself, and not rely upon the docket or index kept by the clerk of the court. *Armstrong v. Ashley*, 22 App.D.C. 368, 1903 U.S. App. LEXIS 5541 (1903).

An erroneous description in a deed of trust, which describes the property conveyed as having a frontage of 34 feet on a certain street, instead of 42.35 feet, will be corrected in equity, where the whole property is covered with a building, with no intermediate wall to mark any division of the frontage, and it was understood and believed by the parties that the description of the premises covered the entire building. *Manogue v. Bryant*, 15 App.D.C. 245, 1899 U.S. App. LEXIS 3511 (1899).

A judgment creditor, whose knowledge, prior to the recovery of the judgment, of the premises mortgaged by his debtors, of the condition and uses of the building thereon, and of the improbability that any reasonable person would make a loan on an undivided part of the building which gave value to the security, induced the belief that the mortgage embraced all the ground occupied by the building, is charged with notice of the equitable right of the mortgagee to have the misdescription in the mortgage corrected. *Manogue v. Bryant*, 15 App.D.C. 245, 1899 U.S. App. LEXIS 3511 (1899).

The omission of the words "before me" by the recorder of deeds, in his transcription of a certificate of acknowledgment, attached to a deed, reading that the grantor "personally ap-

peared before me on the day and date hereof," does not make the record of the deed ineffectual to give constructive notice to third persons of the transfer; and, if the transcript be subsequently corrected by the recorder, the record is admissible in evidence. *Sis v. Boarman*, 11 App.D.C. 116, 1897 U.S. App. LEXIS 3113 (1897).

Under District of Columbia law, improper notarization of deed and related documents, executed in conjunction with transfer of real property from individual to limited liability company (LLC) and concomitant mortgage loan to transferor's LLC, did not invalidate documents as between transferor and lender; statute requiring acknowledgment and certification of deeds as condition of their taking effect applied only to recordation, and provided protection for creditors and subsequent bona fide purchasers, and thus did not bar operation of signed, sealed and delivered documents against transferor. *Sloan v. Urban Title Servs., Inc.*, 652 F.Supp.2d 51, 2009 U.S. Dist. LEXIS 84789 (2009).

Bank's security interest in Chapter 11 debtor's residence was perfected upon recordation of second deed of trust that erroneously described property as being in square 452 instead of square 1452, and thus debtor could not exercise strong-arm powers to avoid security interest, even if error resulted in improper indexing in square and lot index, where deed of trust contained correct street address and referred to instrument number of deed under which debtor took title to property; information in deed of trust was sufficient to put subsequent purchasers on notice of lien. D.C. Code 1981, §§ 45-701, 45-801; Bankr.Code, 11 U.S.C. § 544(a). *Harris v. Maryland Nat'l Bank* (In re Harris), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

In general.

Where property settlement agreement provided that property which had been acquired during coverture and which was held by husband and wife as tenants by the entirety should continue to be held in such manner after divorce and statute permitted divorced persons to so hold property, tax lien filed against former husband after the divorce did not attach to such property even though property had been conveyed out to third parties whose credit permitted refinancing and who immediately reconveyed property back to parties who held as tenants by the entirety. D.C. Code §§ 16-910, 45-501; 26 U.S.C. (I.R.C.1954) § 6672. *Benson v. United States*, 442 F.2d 1221, 1971 U.S. App. LEXIS 11342 (C.A.D.C. 1971).

Under District of Columbia law, leaseholds for a term of years are "estates in land". D.C.

Code 1951, §§ 45-801, 45-804. *Jacobsen v. Sweeney*, 202 F.2d 461, 1953 U.S. App. LEXIS 3259 (C.A.D.C. 1953).

Assignment of rents reserved under short-term lease is transfer of "personalty" rather than "estate in land" (D.C. Code 1929, T. 25, § 171). *Commercial Credit Co. v. Campbell*, 74 F.2d 468, 1934 U.S. App. LEXIS 3993 (1934).

A purchaser of land with notice of a prior equity superior to the rights of his grantor takes his place; and specific performance will be decreed against such a purchaser to the same extent as it would have been decreed against his grantor. *Kresge v. Crowley*, 47 App.D.C. 13, 1917 U.S. App. LEXIS 2588 (1917).

The right given a trustee in bankruptcy by Bankr.Act, §§ 70e, 67a, 67b, to set aside, as a preference under section 60a, a transfer which was ineffective as against creditors under a local recording statute, is not affected by the fact that the transfer is binding as between the parties to it. *Dulany v. Morse*, 39 App.D.C. 523, 1913 U.S. App. LEXIS 2029 (1913).

When a deed, sufficient to vest a title, is executed and delivered, the law raises the presumption of an intent to pass title in accordance with its terms. *Walker v. Warner*, 31 App.D.C. 76, 1908 U.S. App. LEXIS 5585 (1908).

A trustee in bankruptcy does not take the bankrupt's property as an innocent purchaser, but takes title subject to all equities, liens, or incumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the bankrupt's hands. *Crosby v. Ridout*, 27 App.D.C. 481, 1906 U.S. App. LEXIS 5193 (1906).

Where a deed, after delivery, is returned to the grantor for the correction of a defective acknowledgment, it is not destroyed by the erasure by the grantor of his signature without the knowledge or consent of the grantee. *Fitzgerald v. Wynne*, 1 App.D.C. 107, 1893 U.S. App. LEXIS 3015 (1893).

Pursuant to doctrine of equitable conversion, purchaser of real property acquired equitable title to the property as soon as the contract of sale was executed. *SMS Assocs. v. Clay*, 868 F. Supp. 337, 1994 U.S. Dist. LEXIS 17185 (1994), affirmed without opinion by 70 F.3d 638, 315 U.S. App. D.C. 77, 1995 U.S. App. LEXIS 39224 (1995).

Vendor's attempted conveyance of real property to a trust dated after date of contract of sale between vendor and purchaser and not recorded until after filing of District of Columbia court order granting specific performance of the contract and deed of trust against the property allegedly for past consideration executed by vendor after court ordered specific performance did not and could not have become effective against the property; vendor could not

grant more than the interest he had in the property after execution of the sales contract and court order granting specific performance, namely he could only grant an interest in his right to be paid any outstanding sum pursuant to the sales contract. *SMS Assocs. v. Clay*, 868 F. Supp. 337, 1994 U.S. Dist. LEXIS 17185 (1994), affirmed without opinion by 70 F.3d 638, 315 U.S. App. D.C. 77, 1995 U.S. App. LEXIS 39224 (1995).

At common law, a deed is valid between the parties if signed, sealed, and delivered, though not acknowledged or recorded. *Lumpkins v. CSL Locksmith, LLC*, 911 A.2d 418, 2006 D.C. App. LEXIS 626 (2006).

A deed conveying real estate is one of the most solemn instruments known to the law; there is presumption that it is what it comports to be on its face and one who endeavors to prove otherwise must satisfy the "clear and convincing" burden of proof. *Hertz v. Klavan*, 374 A.2d 871, 1977 D.C. App. LEXIS 334 (1977).

Parol evidence is admissible to show actual intent of the parties to a deed; it is not the rule that only evidence of fraud is admissible to contradict the terms of the deed so as to support imposition of a constructive trust. *Hertz v. Klavan*, 374 A.2d 871, 1977 D.C. App. LEXIS 334 (1977).

Where apartment building project purchased from the government was conveyed to a Veterans' Cooperative by a deed made February 2, 1948, but reciting that it was made "as of the 31st day of December 1947," and stating that property was conveyed subject to all outstanding valid leaseholds, deed was subject to an outstanding leasehold of a tenant whose amended lease was dated as of January 2, 1948, since the tenant's rights could not be affected by the predating of the deed. D.C. Code 1940, § 45-501. *Owens v. Liff*, 65 A.2d 921, 1949 D.C. App. LEXIS 188 (Cr.App. 1949).

Judgment liens.

Under the recording act for the District of Columbia of April 20, 1878, providing that deeds, etc., shall take effect, as to creditors and subsequent purchasers, etc., only from the time of delivery for record, where a deed is not filed for record until after a judgment is recovered against the grantor, the judgment creditor having no notice of its existence until after issue of execution and levy, the lien of the judgment is superior to the conveyance. *Hitz v. National Metropolitan Bank*, 4 S.Ct. 613, 1884 U.S. LEXIS 1828 (U.S. Dist. Col. 1884).

Where plaintiff, in purchasing land, had the deed made to C., who executed a deed to a third person, who conveyed to plaintiff before the deed to C. was delivered, C. never acquired any interest to which a prior judgment lien could attach. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

An equitable lien attaching to the bankrupt's property before he becomes a bankrupt is superior to the liens of judgment creditors and claims of general creditors. *Crosby v. Ridout*, 27 App.D.C. 481, 1906 U.S. App. LEXIS 5193 (1906).

Possession of deed.

Where instrument executed by a wife, which allegedly conveyed certain estates to children named therein, remained in the hands of the attorney who drafted the instrument, there was no delivery thereof which would make it effective as a deed. D.C. Code 1940, § 45-501. *Schooler v. Schooler*, 173 F.2d 299, 1948 U.S. App. LEXIS 2005 (C.A.D.C. 1948).

The act of delivery is essential to the existence of any deed. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

Where a deed never came into the possession of the grantee until it was delivered for record, it had no legal existence until that time, as the act of delivery is essential to the existence of any deed. *Atlas Portland Cement Co. v. Fox*, 265 F. 444, 1920 U.S. App. LEXIS 1415 (1920).

Recording and registration.

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. D.C. Code 1951, §§ 45-501, 45-601. *Osin v. Johnson*, 243 F.2d 653, 1957 U.S. App. LEXIS 2976 (C.A.D.C. 1957).

A primary purpose for recording an instrument is to give notice of its existence to those about to deal with the property involved, and such persons are protected by, and charged with, notice of the recorded instrument, but the purpose in most cases is not to inform those with existing interests of events purportedly affecting their property and to charge them with such knowledge. *Young v. Howard*, 120 F.2d 712, 1941 U.S. App. LEXIS 3530 (1941).

A recodation operates prospectively, not retrospectively. *Young v. Howard*, 120 F.2d 712, 1941 U.S. App. LEXIS 3530 (1941).

Assignment of rents reserved under short-term lease is transfer of "personalty" rather than "estate in land," and hence is not within statute making unrecorded deed conveying "interest in realty" ineffective against creditors without notice. D.C. Code 1929, T. 25, § 171.

Commercial Credit Co. v. Campbell, 74 F.2d 468, 1934 U.S. App. LEXIS 3993 (1934).

A deed of trust not recorded until after the filing of the petition in bankruptcy held to have taken effect as to the creditors of the debtor, and as to his trustee in bankruptcy, as of the date when they received actual notice of it, and hence not voidable as a preference at the trustee's suit under Bankr.Act, § 60b, as amended (Comp.St.1916, § 9644), and D.C. Code, § 499. Staples v. Warren, 46 App.D.C. 363, 1917 U.S. App. LEXIS 2557 (1917).

A deed, given as security for a loan, executed more than four months previously, but withheld from record until the day preceding the filing of a petition in bankruptcy against the grantor, whose creditors had no notice of its existence, will be set aside as a voidable preference under section 60a, Bankr.Act, irrespective of the sufficiency of the consideration or of the good faith of the parties, where the local statute makes a deed or mortgage effective as against creditors without notice only from the time of recording it. Dulany v. Morse, 39 App.D.C. 523, 1913 U.S. App. LEXIS 2029 (1913).

A local statute making a deed or mortgage effective against creditors only from the time of recording it "requires" it to be recorded so far as creditors are concerned, in the sense in which that word is used in section 60a, Bankr.Act, providing, with reference to preferences within four months, that, where the preferences consist in a transfer, that period shall not expire until four months after the date of recording it, if by the law such recording is "required." Dulany v. Morse, 39 App.D.C. 523, 1913 U.S. App. LEXIS 2029 (1913).

Under Code, § 499, 31 Stat. 1268, c. 854, providing that a deed conveying an interest in real estate shall take effect, as against creditors without notice, only from the time of recording, a judgment creditor, who files a bill in equity to subject the equitable interest of his debtor to the satisfaction of the judgment, has priority over a grantee of such equitable interest, who does not record his deed till after the filing of the bill and service of process, although the deed is executed prior to that date. Ohio Nat. Bank v. Berlin, 26 App.D.C. 218, 1905 U.S. App. LEXIS 5351 (1905).

While one who deals with land is required to take notice of all conveyances on record at the time nothing placed on record after one has acquired title to the property, otherwise than by himself or by his procurement, can legally affect his rights. Armstrong v. Ashley, 22 App.D.C. 368, 1903 U.S. App. LEXIS 5541 (1903).

The main object of the statutes requiring deeds of conveyance to be acknowledged and recorded, is to prevent the practice of fraud upon creditors and purchasers, and to furnish

means of notice and protection to innocent third parties. Fitzgerald v. Wynne, 1 App.D.C. 107, 1893 U.S. App. LEXIS 3015 (1893).

As between the parties, a deed is valid, though not recorded. Fitzgerald v. Wynne, 1 App.D.C. 107, 1893 U.S. App. LEXIS 3015 (1893).

Vendor of real property failed to show that general partner of purchaser had actual notice prior to execution of sales contract of promissory note which was purportedly secured by the property and which was recorded after execution of the sales contract and court order granting specific performance of the contract; vendor did not actually learn name of prospective purchaser until after sales contract was signed, vendor's testimony was replete with glaring inconsistencies and unsupported assertions, there was paucity of documentary evidence that would reasonably support conclusion that general partner had knowledge of promissory note, and it was incredulous that vendor, a sophisticated businessman with experience in real estate transactions, would wait until after contract was executed to record deed of trust memorializing security interest purportedly given by promissory note. SMS Assocs. v. Clay, 868 F. Supp. 337, 1994 U.S. Dist. LEXIS 17185 (1994), affirmed without opinion by 70 F.3d 638, 315 U.S. App. D.C. 77, 1995 U.S. App. LEXIS 39224 (1995).

Notwithstanding District of Columbia's recording act, interests in real property are legally and effectively transferred even if conveying document is not recorded; only if third party should acquire interest in the property without notice of unrecorded instrument will act intervene to deny its enforceability. SMS Assocs. v. Clay, 868 F. Supp. 337, 1994 U.S. Dist. LEXIS 17185 (1994), affirmed without opinion by 70 F.3d 638, 315 U.S. App. D.C. 77, 1995 U.S. App. LEXIS 39224 (1995).

Pursuant to District of Columbia law, deed conveying interest in real property is not effective against subsequent bona fide purchaser or creditor without notice unless it is recorded. D.C. Code 1981, § 45-801. Sovran Bank v. United States (In re Aumiller), 168 B.R. 811, 1994 Bankr. LEXIS 951 (1994).

Requirements and effect of recordation of deed are statutory matters that must be determined by reference to governing legislative enactments. D.C. Code 1981, §§ 45-701, 45-801. Harris v. Maryland Nat'l Bank (In re Harris), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Under District of Columbia law, indexing of recorded deed is not required for it to be effective as to third parties. D.C. Code 1981, § 45-801. Harris v. Maryland Nat'l Bank (In re Harris), 165 B.R. 729, 1994 Bankr. LEXIS 401

(1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Even if creditor's lien on corporate debtor's fixtures could be viewed as mortgage, creditor's failure to list corporation as owner of collateral would not give notice to innocent third parties searching grantor-grantee index, and thus such failure would preclude perfection of lien. D.C. Code 1981, §§ 28:9-402(1, 6), 45-701, 45-801. In re New 5510, Inc., 114 B.R. 317, 1990 Bankr. LEXIS 1085 (1990).

When judgment creditor seeks writ of attachment or execution, record owner is not precluded from invoking the recording statute against the judgment creditor insofar as it may protect the record owner in having relied on record title in any dealings in which he fell within the protected class of creditors and subsequent bona fide purchasers and mortgagees without notice. D.C. Code 1981, § 45-801. Fields v. Tillerson, 726 A.2d 670, 1999 D.C. App. LEXIS 47 (1999).

Purpose of recordation of deeds is to protect rights of bona fide purchasers, creditors, assignees and others relying upon indicia of record ownership and, as between grantor and grantee, failure of latter to record cannot be viewed as waiver of rights to the property. D.C. Code § 45-501. Smart v. Nevins, 298 A.2d 217, 1972 D.C. App. LEXIS 300 (1972).

Under evidence that grantee had furnished down payment with which grantor had purchased property and had made contributions toward mortgage payments for number of years thereafter, that deed in favor of grantee was executed at time of conveyance to grantor and that grantee did not record deed at that time

because she did not want her husband to know of the transaction, grantee did not lose title to the property and was not limited to claiming only as a secured creditor for her advances on the purchase price even though grantee did not record deed until after death of grantor some 15 years after death of grantee's husband. D.C. Code § 45-501. Smart v. Nevins, 298 A.2d 217, 1972 D.C. App. LEXIS 300 (1972).

Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. American Sec. Bank v. Cummings, 120 WLR 88 (Super. Ct. 1991).

Time of taking effect.

A deed from landlord to a co-operative association took effect under statute from the date of delivery thereof, so that purchaser from co-operative of the particular apartment could commence proceedings to evict tenant regardless of date of recordation of deed from original landlord to co-operative. D.C. Code 1940, § 45-501. Glennon v. Butler, 66 A.2d 519, 1949 D.C. App. LEXIS 204 (Cr.App. 1949).

Under District of Columbia law, a deed conveying realty takes effect from date of delivery thereof except that, as to creditors and subsequent bona fide purchasers and mortgagees without notice of deed and others interested in property, deed takes effect from time of its delivery to recorders of the deed for record. D.C. Code 1940, § 45-501. Owens v. Liff, 65 A.2d 921, 1949 D.C. App. LEXIS 188 (Cr.App. 1949).

Tenant's unrecorded leasehold interest in property is terminated by foreclosure sale to new owner. Wallace v. Occupant, 115 WLR 2377 (Super. Ct. 1987).

§ 42-402. Defective grants recorded before April 27, 1994.

(a) Any instrument recorded in the Office of the Recorder of Deeds before April 27, 1994, shall be effective notwithstanding the existence of 1 or more of the failures in the formal requisites listed in § 42-404, unless the failure was challenged in a judicial proceeding commenced within 6 months from April 27, 1994.

(b) Nothing in this section shall affect the validity of instruments recorded before April 27, 1994, which have been validated by prior law.

(Mar. 3, 1901, ch. 854, § 499a, as added Apr. 27, 1994, D.C. Law 10-110, § 2(e), 41 DCR 1023.)

Section references. — This section is referred to in § 42-404.

Prior Codifications. — 1981 Ed., § 45-801.1.

Legislative history of Law 10-110. — Law 10-110, the "Property Conveyancing Revision

Act of 1994," was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it

was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

§ 42-403. Defective grants recorded on or after April 27, 1994.

Any instrument recorded in the Office of the Recorder of Deeds on or after April 27, 1994, shall be effective notwithstanding the existence of 1 or more of the failures in the formal requisites listed in § 42-404, unless the failure is challenged in a judicial proceeding commenced within 6 months after the instrument is recorded.

(Mar. 3, 1901, ch. 854, § 499b, as added Apr. 27, 1994, D.C. Law 10-110, § 2(f), 41 DCR 1023.)

Section references. — This section is referred to in § 42-404.

Prior Codifications. — 1981 Ed., § 45-801.2.

Legislative history of Law 10-110. — For legislative history of D.C. Law 10-110, see Historical and Statutory Notes following § 42-402.

§ 42-404. Failures in formal requisites of an instrument.

(a) The failures in the formal requisites of an instrument that may be cured by this act are:

- (1) An omission of an acknowledgment or a defective or improper acknowledgment;
- (2) A failure to attach a clerk's certificate;
- (3) An omission of a notary seal or other seal; or
- (4) An omission of an attestation.

(b) Nothing in this act shall be construed to eliminate the requirement that a deed be under seal. Any deed accepted for recordation without a seal but made effective by operation of this act shall be deemed a sealed instrument.

(c) Nothing in this act shall be construed to validate any instrument with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution or acknowledgment.

(d) Any person convicted of a fraudulent act, in connection with the validation of any instrument under §§ 42-101, 42-402, 42-403, and 42-602 shall be subject to the penalties set forth in § 22-3222.

(Mar. 3, 1901, ch. 854, § 499c, as added Apr. 27, 1994, D.C. Law 10-110, § 2(g), 41 DCR 1023.)

Section references. — This section is referred to in §§ 42-402 and 42-403.

Prior Codifications. — 1981 Ed., § 45-801.3.

Legislative history of Law 10-110. — For legislative history of D.C. Law 10-110, see Historical and Statutory Notes following § 42-402.

References in text. — "This act," referred to in subsections (a) and (b) of this section, is the Act of March 3, 1901, ch. 854. The Act of March 3, 1901 enacted a code of laws for the District of Columbia.

§ 42-405. Notice of address and name change.

(a) All parties with an interest in a particular real property (including owners of the real property, mortgagees, secured parties under a deed of trust, trustees, or lienholders) shall notify the Recorder of Deeds in writing in the event of a name change or address change. The notice shall identify the real property and specify the interest held in the property. A person to whom an interest in a particular real property has been transferred shall provide their full name and address when recording the interest.

(b) The Recorder of Deeds shall enter into its land records all updated information received according to subsection (a) of this section.

(b-1) Notwithstanding subsection (a) of this section, an owner, as defined under § 47-802(5), may notify the Office of Tax and Revenue of an address change in lieu of filing with the Recorder of Deeds. The notice shall identify the real property by square, suffix and lot, parcel and lot, or reservation and lot, and shall specify the interest held in the real property.

(c) The District shall assess a fee not to exceed \$300 against an interested party if the District is unable to locate the interested party using all available information in the land records at the Office of the Recorder of Deeds or other information available at the Office of Tax and Revenue.

(d) The Mayor shall issue rules to implement this section.

(Mar. 3, 1901, ch. 854, § 499d, as added Oct. 23, 1997, D.C. Law 12-34, § 2, 44 DCR 4827; Apr. 4, 2003, D.C. Law 14-282, § 7(a), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-801.4.

Effect of amendments. — D.C. Law 14-282 added subsec. (b-1); and in subsec. (c), substituted “Office of Tax and Revenue” for “Department of Finance and Revenue”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(a) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 8(a) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 8(a) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 8(a) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 8(a) of Tax Clarity and Related

Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 12-34. — Law 12-34, the “Real Property Interests Reporting Improvement Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-177, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 17, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-130 and transmitted to both Houses of Congress for its review. D.C. Law 12-34 became effective on October 23, 1997.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

CASE NOTES

In general.

The law requires strict compliance with the statutes and regulations governing tax sales of

real property. *Bembery v. District of Columbia*, 852 A.2d 935, 2004 D.C. App. LEXIS 306 (2004).

§ 42-406. First recorded deed preferred.

When 2 or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 500.)

Prior Codifications. — 1981 Ed., § 45-802. 1973 Ed., § 45-502.

§ 42-407. Instrument not properly executed or acknowledged not recordable.

The Recorder of Deeds shall not:

(1) Accept for recordation any instrument unless the instrument is executed and acknowledged according to law by the person granting or contracting his or her right, title, or interest in the real property;

(2) Accept for recordation any deed, as defined in § 42-1101(3), concerning real property in connection with which taxes, assessments, or charges are owing under chapter 11 of this title, under chapters 9 and 14 of Title 47, or to a taxing agency as defined in § 47-1330(8); provided, that this paragraph shall not:

(A) Act to bar collection of the delinquent taxes, assessments, or charges; and

(B) Apply to real property acquired by the District, receiving assistance under the Distressed Properties Improvement Program established pursuant to § 42-3508.04, or encumbered by an instrument securing payment of a promissory note executed under § 47-1353(a)(3); or

(3) Require liens filed by a taxing agency as defined in § 47-1330(8), or liens filed under § 47-4421, to be acknowledged; provided, that when a lien is delivered to the Recorder of Deeds via an electronic medium or first accessible via the Internet, the lien shall be deemed filed and recorded, notwithstanding any other law.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 555; June 30, 1902, 32 Stat. 533, ch. 1329; June 13, 1990, D.C. Law 8-136, § 5, 37 DCR 2620; Apr. 4, 2003, D.C. Law 14-282, § 7(c), 50 DCR 896; Mar. 13, 2004, D.C. Law 15-105, § 72(a), 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 45-803. 1973 Ed., § 45-503.

Effect of amendments. — D.C. Law 14-282 rewrote the section which had read as follows: “§ 42-407. Instrument not properly executed or acknowledged not recordable.” “The Recorder of Deeds shall not accept for recordation any in-

strument unless the instrument is executed and acknowledged according to law by the person granting or contracting his or her right, title, or interest in the land, or any instrument for property against which a lien for delinquent water, sanitary sewer, or meter service charges has been assessed in accordance with § 34-

2109, § 34-2110, or § 34-2407.02. The Recorder of Deeds shall require any person who attempts to record a deed to convey real property to provide written certification from the Mayor that any bill rendered for water, sanitary sewer, or meter service charges to the property has been paid in full."

D.C. Law 15-105, in par. (2), validated previously made technical corrections.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(c) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 8(c) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 8(c) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 8(c) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 8(c) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 8-136. — Law 8-136, the "District of Columbia Water and Sewer Operations Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act

No. 8-192 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Delegation of Authority. — Delegation of authority under D.C. Law 8-136, the "D.C. Water and Sewer Operations Act of 1990," see Mayor's Order 91-176, October 24, 1991.

Editor's notes. — Mayor authorized to issue rules: Section 8 of D.C. Law 8-136 provided that within 60 days of June 13, 1990, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this act including rules regarding deposits, meters, liens, the sale and redemption of real property, the amnesty program, receivership, termination of water and sewer services, and administrative review; that the proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, and, if the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved; and that if after 90 days from June 13, 1990, the Mayor has failed to issue proposed rules to implement the provisions of this act as provided in subsection (a) of this section, the Council may adopt any legislation necessary to accomplish the purposes of this act.

CASE NOTES

In general.

Statute, which makes it unlawful to print or publish any notice, statement, or advertisement with respect to sale or rental of a dwelling that indicates any preference based on race, prohibits recorder of deeds for District of Columbia from accepting for filing instruments which contain racially restrictive covenants. Fair Housing Act of 1968, § 804(c), 42 U.S.C. § 3604(c). *Mayers v. Ridley*, 465 F.2d 630, 1972 U.S. App. LEXIS 8675 (C.A.D.C. 1972).

Even though a paper presented to the recorder of deeds for record appears on its face to be one entitled to be recorded, and the recorder of deeds has exceeded his authority in refusing to record it, the court will not, by mandamus,

compel him to record it, if it appears on a consideration of the contents of the paper that it is invalid under the law. *Dancy v. Clark*, 24 App.D.C. 487, 1905 U.S. App. LEXIS 5382 (1905).

While the recorder of deeds for this District is a ministerial officer without jurisdiction to pass on the validity of an instrument of writing presented to him for record, he is not wholly without discretion to determine whether a given instrument shall be admitted to record. He has the right to exercise discretion in the premises, but not judicial discretion; and whether his action in a given case falls within the scope of authority vested in him is to be determined by the court according to the prin-

ciples of law applicable to the facts. *Dancy v. Clark*, 24 App.D.C. 487, 1905 U.S. App. LEXIS 5382 (1905).

§ 42-408. Record of conveyance by infant or infant trustee as evidence.

The record or a copy thereof of any deed recorded shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 519; June 30, 1902, 32 Stat. 532, ch. 1329; Apr. 18, 1996, D.C. Law 11-110, § 47, 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 45-804. 1973 Ed., § 45-504.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on December 5, 1995 and January 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 42-409. Bonds and contracts relating to land recordable.

Any title bond or other written contract in relation to land may be acknowledged, certified, and recorded in the same manner and with like effect as to notice as deeds for the conveyance of land.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 501; June 30, 1902, 32 Stat. 531, ch. 1329.)

Prior Codifications. — 1981 Ed., § 45-805. 1973 Ed., § 45-505.

§ 42-410. Map or plat of subdivisions not recordable.

It shall not be lawful for any person or persons to record any map or plat of the subdivision of land in the District of Columbia in the office of the Recorder of Deeds for said District, whether such map or plat be attached to a deed or other document or is offered separately for record.

(Aug. 24, 1894, 28 Stat. 501, ch. 329.)

Cross references. — Recordation of maps and plats in surveyor’s office, see § 1-1305 et seq.

Prior Codifications. — 1981 Ed., § 45-806. 1973 Ed., § 45-506.

CASE NOTES

In general.

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the

plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. D.C. Code §§ 1-605, 45-506. *Case v. Morrisette*, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on revised plat recorded with declaration of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscrip-

tion was recorded in office of recorder of deeds rather than with surveyor. D.C. Code §§ 1-605, 45-506. *Case v. Morrisette*, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

Principal purpose of filing plat in office of surveyor is to establish areas and boundaries of lots in the subdivision. D.C. Code §§ 1-605, 45-506. *Case v. Morrisette*, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

CHAPTER 5. ESTATES IN LAND.

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- 42-501. Recognized estates.
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Sec.

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- 42-523. Provisions applicable to personal property.

§ 42-501. Recognized estates.

Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates at will, and estates by sufferance.

(Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1011.)

Cross references. — Statute of frauds, see §§ 28-3501, 28-3503.

Prior Codifications. — 1981 Ed., § 45-201. 1973 Ed., § 45-801.

CASE NOTES

ANALYSIS

Leaseholds.

Tenancy by the entirety.

Leaseholds.

Under District of Columbia law, leaseholds for a term of years are “estates in land”. D.C. Code 1951, §§ 45-801, 45-804. *Jacobsen v. Sweeney*, 202 F.2d 461, 1953 U.S. App. LEXIS 3259 (C.A.D.C. 1953).

Tenancy by the entirety.

Where a deed conveys a life estate to be held

as tenants by the entirety, the surviving spouse takes all of the life estate. *Allen v. Schultheiss*, 981 A.2d 610, 2009 D.C. App. LEXIS 499 (2009).

As a result of the concept that a married couple constitutes a unit, neither spouse in a tenancy by the entirety may alienate or encumber the property acting alone, but both parties may do so acting together. *Allen v. Schultheiss*, 981 A.2d 610, 2009 D.C. App. LEXIS 499 (2009).

§ 42-502. Fee simple estates — Estates tail abolished.

All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple.

(Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1012.)

Prior Codifications. — 1981 Ed., § 45-202.

1973 Ed., § 45-802.

§ 42-503. Fee simple estates — Absolute or qualified.

An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1013.)

Prior Codifications. — 1981 Ed., § 45-203. 1973 Ed., § 45-803.

CASE NOTES

In general.

Qualified, determinable, or defeasible fees were known at common law and are recognized

in the District of Columbia. D.C. Code 1940, § 45-803. *Roberds v. Markham*, 81 F.Supp. 38, 1948 U.S. Dist. LEXIS 1818 (D.D.C.1948).

§ 42-504. Freeholds; chattels real; chattel interests; conditions precedent or subsequent.

Estates of inheritance and estates for life shall continue to be denominated freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1014.)

Prior Codifications. — 1981 Ed., § 45-204. 1973 Ed., § 45-804.

CASE NOTES

Leaseholds.

Under District of Columbia law, leaseholds for a term of years are "estates in land". D.C. Code 1951, §§ 45-801, 45-804. *Jacobsen v. Sweeney*, 202 F.2d 461, 1953 U.S. App. LEXIS 3259 (C.A.D.C. 1953).

Under District of Columbia Law, a leasehold interest in realty for term of years is personal property and subject to execution as such. D.C. Code 1940, § 45-804; 26 U.S.C. (I.R.C.1939) § 3690. *Stagecrafters' Club, Inc. v. District of Columbia Division of American Legion*, 110 F.Supp. 481, 1953 U.S. Dist. LEXIS 3099 (D.D.C.1953).

Five year concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to new lessees, was chattel real and interest in land, and lease coupled with assignment entitled new lessees to all rents subsequently accruing on prior lease and all remedies available against tenant by his landlord. D.C. Code 1951, § 45-804. *Gulf Motors v. Fenner*, 114 A.2d 543, 1955 D.C. App. LEXIS 255 (Cr.App. 1955).

§ 42-505. Estates pur autre vie; when deemed freehold and when chattel real.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1015.)

Prior Codifications. — 1981 Ed., § 45-205. 1973 Ed., § 45-805.

CASE NOTES

In general.

Under statute providing that estate for life of third person shall be deemed freehold only during life of grantee or devisee but after his death shall be deemed chattel real and be part of his personal estate, interest of testator's nephew in one-third of income of trust during life of testator's brother was not extinguished at time of death of nephew who predeceased testator's brother, and such income would be paid to personal representatives of nephew's estate during life of testator's brother. D.C. Code 1967, § 45-805. *Bobys v. Bobys*, 284 F. Supp. 321, 1968 U.S. Dist. LEXIS 7747 (D.D.C.1968).

Under statute providing that estate for life of third person shall be deemed freehold only during life of grantee or devisee, but after his death shall be deemed chattel real and be part of his personal estate, where testator's nephew was given one-third of income from trust during life of testator's brother and brother was given two-thirds of income during his life and will

provided for termination of trust upon death of brother with distribution to nephew or his children, nephew's death before death of brother did not entitle brother to receive nephew's interest. D.C. Code 1967, § 45-805. *Bobys v. Bobys*, 284 F. Supp. 321, 1968 U.S. Dist. LEXIS 7747 (D.D.C.1968).

Under statute providing that estate for life of third person shall be deemed freehold only during life of devisee but after his death shall be deemed chattel real and be part of his personal estate, where testator's nephew was given one-third of income from trust during life of testator's brother and will provided that, in event of nephew's predeceasing brother, corpus, after deduction of specific legacy, was to be paid to nephew's children, fact that nephew predeceased brother did not entitle nephew's children to acceleration of provision made as to them. D.C. Code 1967, § 45-805. *Bobys v. Bobys*, 284 F. Supp. 321, 1968 U.S. Dist. LEXIS 7747 (D.D.C.1968).

§ 42-506. Estates classified; possession; expectancy.

Estates are either in possession or in expectancy.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1016.)

Prior Codifications. — 1981 Ed., § 45-206. 1973 Ed., § 45-806.

§ 42-507. Estate in possession.

An estate in possession exists when the owner has an immediate right to the possession of the land.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1017.)

Prior Codifications. — 1981 Ed., § 45-207. 1973 Ed., § 45-807.

§ 42-508. Estate in expectancy.

An estate in expectancy is either a reversion or a future estate.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1018.)

Prior Codifications. — 1981 Ed., § 45-208. 1973 Ed., § 45-808.

§ 42-509. Reversions.

A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the deviser who has devised a particular estate less than his

own, and which residue returns to his or their possession on the expiration of the particular estate.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1019.)

Prior Codifications. — 1981 Ed., § 45-209. 1973 Ed., § 45-809.

§ 42-510. Future estates — Commencement.

A future estate is one limited to commence at a future day, either without the intervention of a precedent estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1020.)

Prior Codifications. — 1981 Ed., § 45-210. 1973 Ed., § 45-810.

CASE NOTES

In general.

Where testator bequeathed residue of estate in trust for benefit of widow with direction that, upon death or remarriage of widow, trustee should divide estate among testator's children, which shares should be held in trust until each of the children should attain age of 37 years, and testator was survived by two sons who were under 37, future interests created for sons were "vested" and not "contingent remainders" for inheritance tax purposes, notwithstanding that legal estate would not pass until sons respectively reached age of 37. D.C. Code 1940, §§ 45-810 to 45-813, 45-812, 47-1607.

District of Columbia v. Clark, 175 F.2d 821, 1948 U.S. App. LEXIS 1989 (C.A.D.C. 1948).

Conveyance of house by husband's parents, by deed to themselves and husband with express intent to make gift of house to husband and wife as "wedding gift" prior to wedding which was cancelled six years before couple's marriage, was sufficient for delivery and absolute disposition of either present or future interest in house to wife, subject to special limitation, condition subsequent, or executory limitation. D.C. Code 1981, §§ 45-210, 45-211, 45-212, 45-301. Singer v. Singer, 636 A.2d 422, 1994 D.C. App. LEXIS 3 (1994).

§ 42-511. Future estates — Remainder and conditional limitation.

If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1021.)

Cross references. — Proceeding by remainderman to determine whether or not life tenant is still alive, see § 16-1151 et seq.

Prior Codifications. — 1981 Ed., § 45-211. 1973 Ed., § 45-811.

CASE NOTES

In general.

Conveyance of house by husband's parents, by deed to themselves and husband with express intent to make gift of house to husband and wife as "wedding gift" prior to wedding

which was cancelled six years before couple's marriage, was sufficient for delivery and absolute disposition of either present or future interest in house to wife, subject to special limitation, condition subsequent, or executory

limitation. D.C. Code 1981, §§ 45-210, 45-211, 45-212, 45-301. *Singer v. Singer*, 636 A.2d 422, 1994 D.C. App. LEXIS 3 (1994).

§ 42-512. Future estates — Vested and contingent.

A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain.

(Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1022.)

Prior Codifications. — 1981 Ed., § 45-212. 1973 Ed., § 45-812.

CASE NOTES

ANALYSIS

Contingent interests.

- Alternative or supplanting limitations, contingent interests.
- In general.
- Vesting on occurrence of contingency, contingent interests.

Vested interests.

- Divesting or opening of interest, vested interests.
- In general.
- Inheritance tax implications, vested interests.
- Vesting favored under law, vested interests.

Contingent interests.

— Alternative or supplanting limitations, contingent interests.

In absence of named remainderman living at expiration of life estate, property reverts in case of an alternative limitation, and in the case of a supplanting limitation the property passes to heirs or devisees of deceased remainderman. D.C. Code 1940, § 45-812. *Scott v. Powell*, 182 F.2d 75, 1950 U.S. App. LEXIS 2751 (C.A.D.C. 1950).

In terms of the law of future interests, an “alternative limitation” requires survival of remainderman to end of preceding interests, and “supplanting limitation” does not necessarily require such survival of remainderman but imposes a condition, the happening of which replaces remainderman with another. D.C. Code 1940, § 45-812. *Scott v. Powell*, 182 F.2d 75, 1950 U.S. App. LEXIS 2751 (C.A.D.C. 1950).

— In general.

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to

testatrix’ three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son’s descendant became substituted remainderman when he died before event which constituted contingency on which his interest depended. D.C. Code 1940, §§ 45-101, 45-812, 45-814, 45-815. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Where testator attempted to divide his property with some degree of equality among his children except one and to have each child’s share go to his eldest son in fee if there were any eldest son, under provision in will devising certain property after death of son C. to his son G. for life, if he be then living, remainder in fee, to any eldest son G. might have living, at the time of his death, “if G. dies before his father, without such son, then remainder in fee to my son F.,” alternative gift to testator’s son F. was a “contingent remainder,” and the contingency was that G. should die before his father without a son, and not simply that he should die without a son. *Reeves v. American Security & Trust Co.*, 115 F.2d 145, 1940 U.S. App. LEXIS 2823 (1940).

A residuary clause includes a reversionary interest in property which would take effect immediately upon failure of contingent remainders where it is nowhere disposed of in the will.

Reeves v. American Security & Trust Co., 115 F.2d 145, 1940 U.S. App. LEXIS 2823 (1940). *

Whenever a contingent remainder amounts to a freehold estate, it must be preceded by a vested estate of freehold. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

Contingent or executory remainders, whereby no present interest passes, arise where the estate in remainder is limited to take effect, either to a dubious and uncertain person, or upon a dubious and uncertain event, so that the particular estate may chance to be determined, and the remainder never take effect. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

Where remainder had not vested, the invalidity of prior devise would not benefit contingent remainderman but intestacy would result as to the property covered by the prior devise. *Lewis v. Cockrell*, 80 F.Supp. 380, 1948 U.S. Dist. LEXIS 2099 (D.D.C.1948).

Conveyance of house by husband's parents, by deed to themselves and husband with express intent to make gift of house to husband and wife as "wedding gift" prior to wedding which was cancelled six years before couple's marriage, was sufficient for delivery and absolute disposition of either present or future interest in house to wife, subject to special limitation, condition subsequent, or executory limitation. D.C. Code 1981, §§ 45-210, 45-211, 45-212, 45-301. *Singer v. Singer*, 636 A.2d 422, 1994 D.C. App. LEXIS 3 (1994).

— **Vesting on occurrence of contingency, contingent interests.**

A contingent remainder does not vest until the contingency on which it is founded actually occurs. *Lewis v. Cockrell*, 80 F.Supp. 380, 1948 U.S. Dist. LEXIS 2099 (D.D.C.1948).

Where interest devised to grandniece followed a life estate to testator's widow, it was a "remainder", and where it was to become effective only on the death of testator's two daughters without descendants it was a "contingent remainder", and where only one daughter had died without descendants such contingent remainder had not vested, and until it had, the grandniece could take nothing. *Lewis v. Cockrell*, 80 F.Supp. 380, 1948 U.S. Dist. LEXIS 2099 (D.D.C.1948).

Vested interests.

— **Divesting or opening of interest, vested interests.**

Where testator provided that on death of survivor of life beneficiaries of income of trust created by will, trustee should pay and deliver entire estate and property then in its possession in fee, share and share alike unto testator's three named nephews, or survivors or survivor of them, each of nephews took a vested

remainder on death of testator but remainders of two nephews who died before end of trust were divested and on death of surviving income beneficiary, surviving nephew was entitled to estate then in hands of trustee. D.C. Code 1940, § 45-812. *Caine v. Payne*, 182 F.2d 246, 1950 U.S. App. LEXIS 2770 (C.A.D.C. 1950).

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix' three sons and the issue of daughter, if any, in fee simple, the issue to take a one-fourth part and, if daughter should die without issue, then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to three-fourths of property on death of testatrix, each designated remainderman took a vested remainder in fee simple subject to be divested in event of his death leaving a descendant prior to death of second life tenant and upon the event of divestment, the substituted remainderman took the remainder. D.C. Code 1940, §§ 45-101, 45-812, 45-814, 45-815. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

If a condition subsequent be possible at the time of making it, and becomes afterwards impossible to be complied with, by the act of God, or the law or the grantor the estate having once vested is not thereby divested, but becomes absolute. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

Mere uncertainty whether a vested remainder in land may be divested before the determination of the preceding estate will not afford ground for refusing foreclosure and sale under a mortgage by the remaindermen, though it might affect the price to be realized from such sale. *Fields v. Gwynn*, 19 App.D.C. 99, 1901 U.S. App. LEXIS 5099 (1901).

A deed of land in trust for the benefit of a married woman for life, and, if she shall have issue living at the time of her death, in trust for such issue and their heirs as tenants in common, and, if she shall have no issue living at the time of her death, in trust for the settler and his heirs, creates a vested remainder in the issue of the married woman who were then living, subject to be opened to let in any child that might be born to her afterwards. *Fields v. Gwynn*, 19 App.D.C. 99, 1901 U.S. App. LEXIS 5099 (1901).

— **In general.**

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take

residue, then it was to go to niece, testatrix' vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. D.C. Code 1951, §§ 19-110, 45-812. *Bank of Galesburg v. Lawrenson*, 240 F.2d 31, 1956 U.S. App. LEXIS 4260 (C.A.D.C. 1956).

There may be vested remainders in equitable estates as well as in legal estates. D.C. Code 1940, § 45-812. *District of Columbia v. Clark*, 175 F.2d 821, 1948 U.S. App. LEXIS 1989 (C.A.D.C. 1948).

Where testatrix devised realty to her daughter for life and then to testatrix' three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and directed that, if daughter should die without issue, then to testatrix' three sons, their heirs and assigns forever share and share alike, the sons each had a vested remainder in one-fourth of property and contingent remainder in one-twelfth. D.C. Code 1940, § 45-812. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Vested remainders (or remainders executed whereby a present interest passes to the party though to be enjoyed in futuro) arise where an estate is invariably fixed to remain to a determinate person after the particular estate is spent. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

A will construed to give testatrix's son a vested remainder, which was not affected by the annexed condition requiring him to pay each of his surviving sisters \$1,000 upon the death of the life tenants; that such condition was discharged by the payment of said sum in advance by the son, his acts having shown an acceptance by him of the condition; and that the vested interest which the son took formed a part of his estate and passed under his will. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

It is the present capacity to take effect in possession, if the precedent estate should determine, which distinguishes a vested from a contingent remainder. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

Under will giving life estate in testamentary trust created therein to testator's stepdaughter, and providing that remainder should be divided, in equal shares, among testator's nephews and nieces listed in will, with the further provision that "the child or children of any one or more of said nephews and nieces deceased taking the parents share," each nephew and niece named in will, who survived testator, took a "vested remainder interest" upon testator's

death, and not a "contingent remainder interest." D.C. Code 1940, § 45-812. *American Sec. & Trust Co. v. Sullivan*, 72 F.Supp. 925, 1947 U.S. Dist. LEXIS 2417 (D.D.C.1947).

— Inheritance tax implications, vested interests.

In computing District of Columbia inheritance tax upon remainder interests, general statute defining vested estates controlled, and remainders that were vested but subject to be divested should be treated as vested. D.C. Code 1940, §§ 45-812, 47-1601 et seq. *Keep v. District of Columbia*, 181 F.2d 789, 1950 U.S. App. LEXIS 2703 (C.A.D.C. 1950).

Where testator bequeathed residue of estate in trust for benefit of widow with direction that, upon death or remarriage of widow, trustee should divide estate among testator's children, which shares should be held in trust until each of the children should attain age of 37 years, and testator was survived by two sons who were under 37, future interests created for sons were "vested" and not "contingent remainders" for inheritance tax purposes, notwithstanding that legal estate would not pass until sons respectively reached age of 37. D.C. Code 1940, §§ 45-810 to 45-813, 45-812, 47-1607. *District of Columbia v. Clark*, 175 F.2d 821, 1948 U.S. App. LEXIS 1989 (C.A.D.C. 1948).

Where testator devised his residuary estate to his wife for life and on her death to testator's daughters in fee simple share and share alike and "in the event that either of them be then dead unto the survivor of them", the daughters acquired a "vested interest" and not a "contingent interest" within District of Columbia Revenue Act which recognizes and taxes separately vested interest and contingent interest. D.C. Code 1940, §§ 45-812, 47-1607. *O'Neill v. District of Columbia*, 132 F.2d 601, 1942 U.S. App. LEXIS 2647 (1942).

— Vesting favored under law, vested interests.

The law favors the vesting of estates, and is inclined to treat conditions as subsequent rather than as precedent. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

Estates will be held to vest at the earliest possible period unless there be a clear manifestation of the intention of the testator to the contrary. Adverbs of time such as "when," in a devise of a remainder, are considered to relate merely to the time of the enjoyment of the estate, and not to the time of the vesting of the interest. *Green v. Gordon*, 38 App.D.C. 443, 1912 U.S. App. LEXIS 2146 (1912).

§ 42-513. Future estates — Alternative.

Two or more future estates may be created to take effect in the alternative,

so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1026.)

Prior Codifications. — 1981 Ed., § 45-213. 1973 Ed., § 45-813.

§ 42-514. Expectant estates — No defeat or bar unless provided for at creation.

No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1029.)

Prior Codifications. — 1981 Ed., § 45-214. 1973 Ed., § 45-814.

CASE NOTES

In general.

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix' three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son's descendant became substituted remainderman when he died before event

which constituted contingency on which his interest depended. D.C. Code 1940, §§ 45-101, 45-812, 45-814, 45-815. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Code of Law 1901, § 1029 (D.C. Code 1929, T. 25, § 274), providing that no expectant estate can be defeated or barred by an alienation or other act of the owner of the intermediate estate, nor by any destruction of such precedent estate by disseisin, forfeiture, surrender, merger, or otherwise, etc., is not applicable to remainders, so as to entitle a widow to dower in lands to which her husband had a remainder in fee, but which were held by the life tenant at the time of the death of the remainderman. *Talty v. Talty*, 40 App.D.C. 587, 1913 U.S. App. LEXIS 2123 (1913).

§ 42-515. Expectant estates — Descendible, devisable, and alienable.

Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1030.)

Prior Codifications. — 1981 Ed., § 45-215. 1973 Ed., § 45-815.

CASE NOTES

In general.

Where testatrix devised realty to her daughter

for life and then to testatrix' three sons and the issue of the daughter, if any, in fee simple,

the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. D.C. Code 1940, §§ 45-101, 45-814, 45-815. *Pyne v. Pyne*, 154 F.2d 297, 1946 U.S. App. LEXIS 2049 (1946).

Code of Law 1901, § 1030 (D.C. Code 1929, T.

25, § 275), which provides that "expectant estate shall be descendible, devisable, and alienable in the same manner as estates in possession," does not change the common-law rule so as to entitle the widow of a remainderman to dower in an estate in remainder held by the life tenant at the time of the death of the remainderman. *Talty v. Talty*, 40 App.D.C. 587, 1913 U.S. App. LEXIS 2123 (1913).

§ 42-516. Tenancies in common, tenancies by the entirety, and joint tenancies.

(a) Every estate granted or devised to 2 or more persons in their own right, including estates granted or devised to spouses or domestic partners, as defined in § 32-701(3), shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed.

(b) An interest in property, whether held in tenancy in common, joint tenancy, or tenancy by the entirety, may be granted by 1 or more persons, as grantor or grantors:

(1) To 1 of them alone as grantee; or

(2) To the following, as grantees in tenancy in common, joint tenancy, or tenancy by the entirety:

(A) The grantors alone;

(B) Two or more of the grantors;

(C) The grantor or grantors and another person or persons; or

(D) One or more of the grantors and another person or persons.

(c) A tenancy by the entirety may be created in any conveyance of real property to spouses or to domestic partners as that term is defined in § 32-701(3).

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 1; Apr. 27, 1994, D.C. Law 10-110, § 2(d), 41 DCR 1023; Sept. 12, 2008, D.C. Law 17-231, § 33(a), 55 DCR 6758; July 18, 2008, D.C. Law 18-33, § 6(a), 56 DCR 4269.)

Prior Codifications. — 1981 Ed., § 45-216. 1973 Ed., § 45-816.

Effect of amendments. — D.C. Law 17-231, in subsec. (a), substituted "including estates granted or devised to spouses or domestic partners, as defined in § 32-701(3), for "including estates granted or devised to husband and wife,".

D.C. Law 18-33 added subsec. (c).

Legislative history of Law 10-110. — Law 10-110, the "Property Conveyancing Revision Act of 1994," was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to

both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

Legislative history of Law 17-231. — Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

Legislative history of Law 18-33. — Law 18-33, the "Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009", was introduced in Council and assigned

Bill No. 18-66, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively.

Signed by the Mayor on May 21, 2008, it was assigned Act No. 18-66 and transmitted to both Houses of Congress for its review. D.C. Law 18-33 became effective on July 18, 2008.

CASE NOTES

ANALYSIS

Intent of grantor.

Joint tenancy.

Nature of statute and effect on common law.

Tenancy by entireties.

—Authority of spouse to act unilaterally, tenancy by entireties.

—Conveyance to husband and wife and third party, tenancy by entireties.

—Creditor's claims, tenancy by entireties.

—In general.

—Marriage requirement, tenancy by entireties. Tenancy in common.

Intent of grantor.

Statutory presumption that a conveyance to two or more creates a tenancy in common applies only when there is no expression to the contrary in the conveyance. D.C. Code 1951, § 45-816. *Coleman v. Jackson*, 286 F.2d 98, 1960 U.S. App. LEXIS 3296 (C.A.D.C. 1960).

Statute providing that a conveyance to two or more should create a tenancy in common unless it expressly declares a joint tenancy does not excuse courts from determining and effecting the intention of the grantor as it appears on the face of the conveyance. D.C. Code 1951, § 45-816. *Coleman v. Jackson*, 286 F.2d 98, 1960 U.S. App. LEXIS 3296 (C.A.D.C. 1960).

Where deed is ambiguous, a court may consider extrinsic evidence of the circumstances surrounding the execution thereof to determine the true intent of the parties. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

Ambiguities in deeds, whether they involve description of property, identity of grantee or nature of estate conveyed, are to be resolved by endeavoring to determine intention of parties. *Snipes v. Douglass*, 319 A.2d 326, 1974 D.C. App. LEXIS 213 (1974).

Where, when deed was executed in names of "John F. Douglass and Elizabeth Douglass, his wife, as tenants by the entirety," deceased was married to woman named Elizabeth but had been living for 15 years with another woman known by same name, court erred, in action wherein both women asserted right to property, in holding that property passed to wife by intestate succession on ground that deed was voided by action of second woman in having sister sign her name to deed of trust, rather than determining as matter of fact which of two women was intended to be referred to in deed

by grantor thereof. *Snipes v. Douglass*, 319 A.2d 326, 1974 D.C. App. LEXIS 213 (1974).

Joint tenancy.

Under circumstances, execution of deed of trust by daughter as one joint tenant in favor of mother as the second joint tenant did not serve either to "sever" the joint tenancy or establish that a joint tenancy never existed between mother and daughter. D.C. Code 1961, §§ 11-738, 45-603, 45-816. *Maynard v. Sutherland*, 313 F.2d 560, 1962 U.S. App. LEXIS 3771 (C.A.D.C. 1962).

Four unities are required for the creation and continuance of a "joint tenancy": unity of time, title, interest and possession. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

The distinguishing characteristic of a "joint tenancy" is the right of the survivors to succeed to a deceased joint tenant's ownership. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

Testator died intestate as to the one-half of his residuary estate that his will left to the husband of his deceased niece, where the provision in the will naming niece's husband as a residual beneficiary was obtained as the result of niece's husband's fraud and undue influence, residuary legatees were tenants in common unless a will declared residuary legatees to be joint tenants, and will did not declare that grandniece and husband of testator's niece were joint tenants. In re *Estate of Turpin*, 19 A.3d 801, 2011 D.C. App. LEXIS 245 (2011).

Nature of statute and effect on common law.

Statute providing that a conveyance to two or more should create a tenancy in common, unless expressly declared to be a joint tenancy, was intended to reverse the common-law rule that a grant or devise to a number of people, without more, creates a joint tenancy. D.C. Code 1951, § 45-816. *Coleman v. Jackson*, 286 F.2d 98, 1960 U.S. App. LEXIS 3296 (C.A.D.C. 1960).

Where death of testator, devising life estate to his daughter with remainder over in fee to her children, occurred before enactment of code, common law applied so as to make children of daughter joint tenants with right of survivorship rather than tenants in common. D.C. Code 1929, T. 25, §§ 133, 276. *Noyes v. Parker*, 92 F.2d 562, 1937 U.S. App. LEXIS 4639 (1937).

The general rule at common law that estate of joint tenancy must be created at one and same time, as well as by one and same title, does not apply to conveyances under statutes of uses and wills, and it was sufficient if parties took by same conveyance, though their interests vested at different times. *Noyes v. Parker*, 92 F.2d 562, 1937 U.S. App. LEXIS 4639 (1937).

Prior to enactment of statute on January 1, 1902, there was in force in District of Columbia a common law rule that a conveyance or devise to two or more persons, whether as a class or by name, without sufficient indication in instrument of intention that they were to hold in severalty, should be construed as creating a joint tenancy and not a tenancy in common. D.C. Code 1940, § 45-816. *American Sec. & Trust Co. v. Sullivan*, 72 F.Supp. 925, 1947 U.S. Dist. LEXIS 2417 (D.D.C.1947).

The continuing existence of tenancies by the entirety was not affected by the passage of this section. *Roberts & Lloyd, Inc. v. Zyblut*, 122 WLR 2157 (Super. Ct. 1994).

Tenancy by entirety.

— Authority of spouse to act unilaterally, tenancy by entirety.

Where husband alone signed agreement between landowners covenanting that no part of the land owned by the parties to agreement should be given or conveyed to or occupied by persons of negro race, land owned by husband and wife as tenants by the entirety was not affected by such agreement. *Herb v. Gerstein*, 41 F.Supp. 634, 1941 U.S. Dist. LEXIS 2490 (D.D.C.1941).

An estate as "tenants by the entirety" is indivisible and is vested in the marital entity of husband and wife, who together are seized of entire estate so that one cannot dispose of his interest without the other. *Sandler v. Wertlieb*, 60 A.2d 222, 1948 D.C. App. LEXIS 158 (Cr.App. 1948).

Husband was entitled to maintain in his own name a suit against tenant for possession of an apartment in a building which he and his wife had purchased as tenants by the entirety. *Sandler v. Wertlieb*, 60 A.2d 222, 1948 D.C. App. LEXIS 158 (Cr.App. 1948).

— Conveyance to husband and wife and third party, tenancy by entirety.

Axiom that a conveyance to husband and wife and another party presumptively grants a one-half interest to the third party and a one-half interest to the husband and wife as an entirety is only a rule of construction, and the intent of the parties must be effected if it can be ascertained. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

Under deed of house "to Herbert L. Wright and Mattie G. Wright, his wife, and Pauline E. Liner. .. as joint tenants," the husband and wife

acquired a one-half interest as tenants by the entirety and the other party acquired a one-half interest jointly with the entirety, particularly where a consideration of the transactions with respect to the property indicated that such result was the most likely intent of the parties. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

— Creditor's claims, tenancy by entirety.

Rights and remedies of existing creditors cannot be obliterated by the expedient of erecting a tenancy by the entirety in property that is otherwise vulnerable. D.C. Code § 30-201 et seq. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Property held in tenancy by the entirety is liable for the spouses' joint debts, and for the individual debts of the surviving cotenant, but as long as coverture is whole, an estate by the entirety unimpeachable at inception is unreachable by legal process at the instance of creditors of one but not of both. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Where decedent and his widow had owned real estate as tenants by the entirety, and property was sold in order to avert foreclosure and proceeds were deposited in account in names of decedent and his widow as tenants by the entirety, and decedent had desired no change in type of ownership of proceeds, proceeds were free from claims of decedent's creditors, and fact that decedent and widow had been separated and had filed separate income tax return would not support inference that decedent and widow had mutually undertaken to dissolve tenancy by the entirety in the fund. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

— In general.

Tenancy by the entirety is recognized whether the subject matter is real or personal. D.C. Code § 30-201 et seq. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Incidents of cotenancy by the entirety are a unilaterally indestructible right of survivorship, inability of one spouse to alienate his interest, and broad immunity from claims of separate creditors. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Where personalty can be held by the entirety, absent a contrary arrangement by the parties, an estate by the entirety preexisting in particular property continues automatically in its derivative on disposition. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Conveyances to husband and wife held to create estates by the entirety, and not joint

tenancy. *Settle v. Settle*, 8 F.2d 911, 1925 U.S. App. LEXIS 3395 (1925).

Words creating joint tenancy will give husband and wife "tenancy by the entirety." *Settle v. Settle*, 8 F.2d 911, 1925 U.S. App. LEXIS 3395 (1925).

Tenancy by the entirety, in District of Columbia, not modified by Married Woman's Act, nor abolished by statute. *Settle v. Settle*, 8 F.2d 911, 1925 U.S. App. LEXIS 3395 (1925).

A business purchased by the husband with his wife's money is held by the entirety, where, during his last illness, the husband, in response to the advice of a clergyman that he settle his affairs, stated that there was nothing to settle, as he and his wife had worked together, and that "it was as much hers" as his. *Flaherty v. Columbus*, 41 App.D.C. 525, 1914 U.S. App. LEXIS 2215 (1914).

The husband and wife are seised of an estate by the entirety *per tout et non per my*, and the whole remains to the survivor. *Flaherty v. Columbus*, 41 App.D.C. 525, 1914 U.S. App. LEXIS 2215 (1914).

Estates by the entirety were not abolished by the married woman's act, and such estates exist in personalty as well as realty. *Flaherty v. Columbus*, 41 App.D.C. 525, 1914 U.S. App. LEXIS 2215 (1914).

In the District of Columbia, a conveyance to husband and wife jointly creates a "tenancy by the entirety". *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

The primary distinction between a "tenancy by the entirety" and a "joint tenancy" is that the former cannot be involuntarily partitioned whereas the latter can be. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

Land, which was conveyed to husband and wife as joint tenants, was held by husband and wife as "tenants by the entirety". *Herb v. Gerstein*, 41 F.Supp. 634, 1941 U.S. Dist. LEXIS 2490 (D.D.C.1941).

Where a deed conveys a life estate to be held as tenants by the entirety, the surviving spouse takes all of the life estate. *Allen v. Schultheiss*, 981 A.2d 610, 2009 D.C. App. LEXIS 499 (2009).

As a result of the concept that a married couple constitutes a unit, neither spouse in a tenancy by the entirety may alienate or encumber the property acting alone, but both parties may do so acting together. *Allen v. Schultheiss*, 981 A.2d 610, 2009 D.C. App. LEXIS 499 (2009).

Inasmuch as estate in the derivative is extension of estate, and not interest newly created, statute providing for creation of tenancy in common upon devise of estate to two or more persons not expressly declared to be joint tenancy did not apply to determination of form of tenancy that vendors retained in proceeds of sale of property that vendors had held as tenants

by the entirety. D.C. Code 1981, § 45-216(a). *Finley v. Thomas*, 691 A.2d 1163, 1997 D.C. App. LEXIS 60 (1997).

Mortgagors were barred by *res judicata* as a result of bankruptcy court proceedings based on first petition in bankruptcy from litigating issues relating to their indebtedness to mortgagees; although one mortgagor was not a party to the bankruptcy proceeding, she nevertheless was barred by *res judicata* because the mortgagors owned their home as tenants by the entirety. D.C. Code 1981, § 45-216. *Williams v. Gerstenfeld*, 514 A.2d 1172, 1986 D.C. App. LEXIS 419 (1986).

— Marriage requirement, tenancy by entirety.

Only some kind of divorce can terminate the marital relation which is indispensable to ownership by the entirety. In *re Estate of Wall*, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Where man and woman were disabled from holding property by the entirety because they were not legally married, deed conveying property to them and purporting to create a tenancy by the entirety created, instead, a joint tenancy, not a tenancy in common. D.C. Code 1951, §§ 18-101, 18-201, 45-816. *Coleman v. Jackson*, 286 F.2d 98, 1960 U.S. App. LEXIS 3296 (C.A.D.C. 1960).

"Tenancy by the entirety" is an estate held by husband and wife as a fictitious unity with right of survivorship; in addition to the four unities necessary for the creation and continuance of a joint tenancy, creation and continuance of a tenancy by the entirety requires unity of husband and wife. *Daniel v. Wright*, 352 F. Supp. 1, 1972 U.S. Dist. LEXIS 10566 (1972).

Where prior to divorce, a house was held by the parties as tenants by the entirety, as a result of the divorce, the parties owned the property as tenants in common. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

Tenancy in common.

Where brother and sister contributed one-half of purchase money and of other expenses incident to property purchased as a joint venture, and benefited and shared equally in rents, profits, and funds derived therefrom, they were in effect tenants in common even though title to property was in name of sister. D.C. Code 1929, T. 25, § 276. *Sheehy v. O'Donoghue*, 94 F.2d 252, 1937 U.S. App. LEXIS 4122 (1937).

Where testator devises estate to named persons, to be divided equally, those persons take as tenants in common. D.C. Code 1951, § 45-816. *Liberty Nat. Bank of Washington v. Smoot*, 135 F.Supp. 654, 1955 U.S. Dist. LEXIS 2630 (D.D.C.1955).

Where testamentary trust created by will directing that children of deceased remainder-

man should take share that parents would have taken was created after January 1, 1902, children of a deceased remainderman took share of their parent as "tenants in common", and not as "joint tenants", and, hence, upon one of the children subsequently dying before life tenant, estate of the deceased child would take same equal share as surviving child or children would take. D.C. Code 1940, § 45-816. *American Sec. & Trust Co. v. Sullivan*, 72 F.Supp. 925, 1947 U.S. Dist. LEXIS 2417 (D.D.C.1947).

A tenant in common owns an undivided interest in the property, and such tenants have no separate estate or interest in any distinct portion of the property over which they have simultaneously rights of property, each being interested according to the extent of his share

in every part of the whole property and its proceeds. *Deming v. Turner*, 63 F.Supp. 220, 1945 U.S. Dist. LEXIS 1672 (D.D.C.1945).

An "undivided" right or title or a title to an undivided portion of an estate is that owned by one of two or more tenants in common or joint tenants before partition. *Deming v. Turner*, 63 F.Supp. 220, 1945 U.S. Dist. LEXIS 1672 (D.D.C.1945).

A cotenant enjoys a unilateral right of partition; this unilateral right of partition makes it possible for any dissatisfied cotenant to, in effect, withdraw from and dissolve the quasi-partnership that cotenancy entails. *Arthur v. District of Columbia*, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

§ 42-517. Coparcenary estates abolished.

There shall be no estate in coparcenary in the District, and where 2 or more persons inherit from an intestate they shall be tenants in common.

(Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 956.)

Prior Codifications. — 1981 Ed., § 45-217. 1973 Ed., § 45-817.

§ 42-518. Estates for years.

An estate for a determined period of time is an estate for years.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1032.)

Prior Codifications. — 1981 Ed., § 45-218. 1973 Ed., § 45-818.

CASE NOTES

Leases.

An ordinary lease of tenancy for years must be certain as to commencement, duration and termination or be capable of being made certain by reference to some collateral event or thing which in itself is certain. D.C. Code 1940, § 45-818. *Smith's Transfer & Storage Co. v. Hawkins*, 50 A.2d 267, 1946 D.C. App. LEXIS 185 (Cr.App. 1946).

A lease for a term of years creates an estate in the grantee, and the rent reserved may be a lump sum, payable either at the commencement of the term or at its end, subject to such conditions as the lease imposes. D.C. Code 1940, § 45-818. *Isquith v. Athanas*, 33 A.2d 733, 1943 D.C. App. LEXIS 182 (Cr.App. 1943).

§ 42-519. Estates from year to year.

An estate expressed to be from year to year shall be good for 1 year only.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1033.)

Prior Codifications. — 1981 Ed., § 45-219. 1973 Ed., § 45-819.

CASE NOTES

Common law rule.

At common law a tenant for years became, by holding over, a tenant for an additional year,

and so on from year to year at the pleasure of the parties. *Morse v. Brainerd*, 42 App.D.C. 448, 1914 U.S. App. LEXIS 2311 (1914).

§ 42-520. Estates by sufferance.

All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hirings by the month or at any specified rate per month, shall be deemed estates by sufferance.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1034; June 30, 1902, 32 Stat. 538, ch. 1329.)

Cross references. — Statute of frauds, see §§ 28-3501 and 28-3503.

Prior Codifications. — 1981 Ed., § 45-220. 1973 Ed., § 45-820.

CASE NOTES

ANALYSIS

Assignment or subletting.
Creation of tenancy at sufferance.
Holding over.
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Assignment or subletting.

The Emergency Rent Act does not give a tenant by sufferance power to sublet contrary to landlord's expressed will, but landlord's right in that respect, and even an express restriction against subletting in a written lease, may be waived by landlord by accepting rent in advance with knowledge of the subletting. D.C. Code 1940, §§ 45-820, 45-1605(b)(1). *Thompson v. Gray*, 50 A.2d 594, 1946 D.C. App. LEXIS 190 (Cr.App. 1946).

In absence of restrictions, a tenant under lease for definite term may sublet the premises; but, where tenant has only an estate at sufferance, if tenant sublets contrary to landlord's wishes, landlord may terminate the tenancy immediately. D.C. Code 1940, § 45-820. *Keroes v. Westchester Apartments*, 36 A.2d 263, 1944 D.C. App. LEXIS 160 (Cr.App. 1944).

Where tenant at sufferance twice sublet apartment for definite terms with express consent of landlord and landlord after it had knowledge that persons in addition to second sublessee were occupying apartment expressly consented that second sublease continue to its expiration date, and accepted rent throughout

remaining period of sublease, landlord had no right to demand possession because of anything which had occurred prior to expiration date of second sublease on ground that tenant was violating "obligation of tenancy" within statute. Code 1940, §§ 45-820, 45-904, 45-1605(b). *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Creation of tenancy at sufferance.

Under statute, tenant on expiration of one-year lease became tenant by sufferance (D.C. Code 1929, T. 25, § 280). *H.L. Rust Co. v. Drury*, 68 F.2d 167, 1933 U.S. App. LEXIS 4915 (1933).

Under Code, § 1034 (D.C. Code 1929, T. 25, § 280) tenants in possession of a property under a lease, which had expired, were tenants by sufferance. *Weaver v. Koester*, 294 F. 1011, 1924 U.S. App. LEXIS 2972 (1924).

Where the lease required the tenant to pay insurance premiums on the premises, the payment of such premiums, insuring the property for a period extending beyond the end of the term fixed by the lease, did not extend the lease, in view of Code, § 1034, D.C. Code 1929, T. 25, § 280, providing that all estates, which by construction of the courts were estates from year to year at common law, as where a tenant for years, after the expiration of his term, continues in possession, shall be deemed estates by sufferance; but the tenant, after the expiration of the term, was merely a tenant by sufferance, and the rent commission had authority to increase the rent, under Ball Rent Act, § 106, 41 Stat. 300, permitting complaints,

except where the tenant is in possession for a term which has not expired. *Forster v. Eliot*, 282 F. 735 (1922).

Even assuming that tenant possessed landlord's property pursuant to tenancy at will which expired with death of landlord, rather than becoming adverse possessor, tenant became by operation of law, tenant at sufferance upon landlord's death, in absence of such hostile possession as was required to assert claim by adverse possession. D.C. Code 1981, § 12-301(1). *Estate of Wells v. Estate of Smith*, 576 A.2d 707, 1990 D.C. App. LEXIS 140 (1990).

Arrangement whereby defendant was occupying his girlfriend's apartment rent free, and at her indulgence, did not constitute "tenancy by sufferance," so as to preclude his conviction for unlawful entry in such apartment. D.C. Code §§ 22-3102, 45-820. *Jackson v. United States*, 357 A.2d 409, 1976 D.C. App. LEXIS 538 (1976).

A "tenancy at sufferance" requires "payment of rent" or "hirings" or a "rate per month" to accompany the estate. D.C. Code § 45-820. *Smith v. Town Center Management Corp.*, 329 A.2d 779, 1974 D.C. App. LEXIS 327 (1974).

Fact that landlord whose tenants were required under lease to surrender premises at expiration of term, did not forcibly evict tenants from premises at expiration of term, did not file suit for possession for two weeks after lease expired, and that tenants, with landlord paying the bills, continued to furnish heat and hot water for other tenants in building as they were required to do under lease, did not create a tenancy by sufferance entitling tenants to thirty-day notice to quit possession, where tenants continued in possession against wishes of landlord. D.C. Code, 1940, §§ 45-820, 45-901. *Williams v. John F. Donohoe & Sons*, 68 A.2d 239, 1949 D.C. App. LEXIS 234 (Cr.App. 1949).

The fact that landlord called tenant a "tenant by sufferance" in complaint in action for possession of premises filed immediately upon expiration of term lease, did not create a "tenancy by sufferance" so as to require landlord to first give tenant a 30 day notice since quoted term was a legal conclusion. D.C. Code 1940, §§ 45-820, 45-901. *Bell v. Westbrook*, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

The fact that tenant continued in possession of premises after expiration of term lease did not create a "tenancy by sufferance" so as to require landlord to give 30 day notice, where landlord brought action for possession immediately upon expiration of term and continuation in possession was result of temporary injunction order obtained by tenant and landlord rejected rent offered by tenant, notwithstanding landlord accepted damages for wrongful suing out of temporary restraining order. D.C. Code 1940, §§ 45-820, 45-901. *Bell v.*

Westbrook, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

Holding over.

Not only will statute of limitations not run against right of owner to recover possession of premises in favor of tenant at sufferance, where tenant holds over, there is implied continuation of all terms of previous agreement, including covenants to maintain. D.C. Code 1981, § 12-301(1). *Estate of Wells v. Estate of Smith*, 576 A.2d 707, 1990 D.C. App. LEXIS 140 (1990).

Status of lessee upon remaining in possession of leased premises after purchaser's 90-day notice to quit expired was that of hold-over tenant or tenant by sufferance. D.C. Code 1961, § 45-820. *Fisher v. Parkwood, Inc.*, 213 A.2d 757, 1965 D.C. App. LEXIS 253 (App. 1965).

A holding over by tenant after expiration of lease is subject to all covenants and terms of original lease applicable to new situation. *Hall v. Henry J. Robb, Inc.*, 32 A.2d 707, 1943 D.C. App. LEXIS 171 (Cr.App. 1943).

Where tenant held over for about 30 months after expiration of written lease, and tenancy could have been terminated on 30 days' notice tenancy created by holding over was impliedly subject to covenant of lease imposing upon tenant liability for cost of needful repairs. D.C. Code 1940, §§ 45-820, 45-904. *Hall v. Henry J. Robb, Inc.*, 32 A.2d 707, 1943 D.C. App. LEXIS 171 (Cr.App. 1943).

Nature of statute.

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. D.C. Code 1951, §§ 45-820, 45-902, 45-904. *Cavalier Apartments Corp. v. McMullen*, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

The code section declaring that all estates which by construction of courts were estates from year to year at common law, as where a tenant for years, after expiration of his term, continues in possession and pays rent, shall be deemed estates by sufferance was as much a part of lease which tenant claimed to have renewed by holding over after expiration thereof and paying rent as though code section had been written into lease. D.C. Code 1940, § 45-820. *Warthen v. Lamas*, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

The code section declaring that estates which by construction of the courts were estates from year to year at common law, as where a tenant for years, after expiration of his term, continues in possession and pays rent, shall be deemed estates by sufferance, is mandatory and neither parties nor courts are at liberty to disregard its express policy. D.C. Code 1940, § 45-820.

Warthen v. Lamas, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Option to renew and election.

Where tenant remained in possession and paid increased rent required by option for additional term after initial term had expired, tenant affirmatively indicated his intent to exercise the option and did not hold over only as a tenant by sufferance. D.C. Code § 45-820. Harris v. Gindes, 265 A.2d 598, 1970 D.C. App. LEXIS 285 (App. 1970).

Where lease provided that lessee could renew lease for an additional term by notifying lessor in writing of such intention before a certain date, written notice sent with monthly rental check bearing lessee's trade-name and his signature, was adequate compliance with provisions of lease, although notice was not signed by lessee. Worthington v. Serkes, 111 A.2d 877, 1955 D.C. App. LEXIS 170 (Cr.App. 1955).

Where a lease has been renewed through tenant's exercise of option to renew, the tenant does not hold for the renewal period under the notice, that he is exercising option to renew, but under the terms and conditions set forth in the original lease. Worthington v. Serkes, 111 A.2d 877, 1955 D.C. App. LEXIS 170 (Cr.App. 1955).

Under the rule that an election by tenant to renew a lease should precede or be concurrent with expiration of lease and not depend upon after events except insofar as they may reflect the understanding of the parties with respect to a precedent act, the fact that tenant remained in possession after expiration of lease and paid rent shed little light upon his intention to exercise option to renew, and, in absence of other evidence, such holding over presumptively created a mere tenancy by sufferance. D.C. Code 1940, § 45-820. Warthen v. Lamas, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Tenancy from month to month.

Though Code of Law 1901, § 1034, declares that verbal hirings by the month shall be deemed estates by sufferance, the tenant is a monthly tenant, as he holds "by the month." Boss v. Hagan, 261 F. 254, 1919 U.S. App. LEXIS 1758 (1919).

Continuance after expiration of lease of month-to-month tenancy was a statutory "tenancy by sufferance" so that landlord's acquiescence in partial subtenant's remaining on premises following expiration of main tenancy divested main tenant of any responsibility for payment of rent for space occupied by his former subtenant. D.C. Code 1981, § 45-220. Comedy v. Vito, 492 A.2d 276, 1985 D.C. App. LEXIS 380 (1985).

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral

tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. D.C. Code 1951, §§ 45-820, 45-902, 45-904. Cavalier Apartments Corp. v. McMullen, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

Tenant holding apartment under verbal hiring by the month was a "tenant at sufferance". D.C. Code 1940, § 45-820. Keroes v. Westchester Apartments, 36 A.2d 263, 1944 D.C. App. LEXIS 160 (Cr.App. 1944).

Tenancy under verbal hiring by the month, though deemed a tenancy at sufferance by the Code is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate from month to month, or an estate at will, and until the Emergency Rent Act became effective was determinable at any time. D.C. Code 1940, §§ 45-820, 45-1605(b). Keroes v. Westchester Apartments, 36 A.2d 263, 1944 D.C. App. LEXIS 160 (Cr.App. 1944).

Tenant holding apartment under verbal hiring by the month was a "tenant at sufferance". Code 1940, § 45-820. Westchester Apartments v. Keroes, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Termination and notice to quit.

Under statute, tenant on expiration of one-year lease becoming tenant by sufferance, was entitled to 30 days' notice to vacate if he paid rent when due (D.C. Code 1929, T. 25, § 280). H.L. Rust Co. v. Drury, 68 F.2d 167, 1933 U.S. App. LEXIS 4915 (1933).

Where tenant, who became tenant by sufferance after expiration of year lease, defaulted in paying rent for two months, he was not entitled to notice to vacate (D.C. Code 1929, T. 25, Secs. 280, 318). Lease for one year provided that in event of tenant's holding over he should give landlord at least 30 days' notice of intention to vacate, and that tenant should be entitled to like notice that landlord desired possession of property, but that in event rent should not be paid in advance without demand tenant should 'not be entitled to any notice to quit, the usual thirty days' notice being hereby expressly waived. H.L. Rust Co. v. Drury, 68 F.2d 167, 1933 U.S. App. LEXIS 4915 (1933).

Where tenant, who became tenant by sufferance after expiration of year lease, defaulted in paying rent for two months, he was not entitled to notice to vacate (D.C. Code 1929, T. 25, §§ 280, 318). H.L. Rust Co. v. Drury, 68 F.2d 167, 1933 U.S. App. LEXIS 4915 (1933).

Where tenant with privilege of renewal on written notice gave only verbal notice, tenancy after expiration of original lease was one by sufferance, terminable on 30 days' notice (Code, § 1034 [D.C. Code 1929, T. 25, § 280]). Na-

tional Cafes v. Elite Laundry Co., 18 F.2d 828, 1927 U.S. App. LEXIS 2075 (1927).

When tenant remained in building after expiration of lease and continued to pay rent, tenant became tenant by sufferance, and thus 30 days' written notice to tenant to vacate premises was sufficient. D.C. Code §§ 45-820, 45-904. *Oliver T. Carr Management, Inc. v. National Delicatessen, Inc.*, 397 A.2d 914, 1979 D.C. App. LEXIS 273 (1979).

Notice to quit given on July 31 to tenants whose lease expired on August 15 and who became tenants by sufferance thereafter was proper and, therefore, could serve as basis for possessory action. D.C. Code §§ 45-820, 45-904. *Brown v. Young*, 364 A.2d 1171, 1976 D.C. App. LEXIS 395 (1976).

Where lease expired on August 15, tenants became tenants by sufferance during second half of August and, therefore, were entitled to a 30-day notice to quit. D.C. Code §§ 45-820, 45-904. *Brown v. Young*, 364 A.2d 1171, 1976 D.C. App. LEXIS 395 (1976).

Lessee who occupied commercial property as hold-over tenant after his three years' written lease had expired was a hold-over tenant by sufferance and his tenancy was subject to termination on thirty days' notice. D.C. Code 1951, §§ 45-820, 45-904. *Lake v. Angelo*, 163 A.2d 611, 1960 D.C. App. LEXIS 243 (Cr.App. 1960).

Where evidence was insufficient to establish that tenant had any special form of lease, he was merely a tenant at sufferance, and a notice to quit which expired 30 days from December 20 was valid although tenancy commenced on first of the month. D.C. Code 1940, §§ 45-820, 45-904, 45-1605. *Sandler v. Wertlieb*, 60 A.2d 222, 1948 D.C. App. LEXIS 158 (Cr.App. 1948).

Where landlord, suing holdover tenant at sufferance for possession of leased property used as rooming house, did not say that he required property for his immediate personal use and occupancy as dwelling, but said that he proposed to continue operation thereof as rooming house, trial judge properly refused to oust tenant. D.C. Code 1940, §§ 45-820, 45-1601 et seq., 45-1605(b). *Lingo v. Wolfe*, 37 A.2d 270, 1944 D.C. App. LEXIS 167 (Cr.App. 1944).

Prior to enactment of District of Columbia Emergency Rent Act, landlord could have evicted tenant by sufferance at any time and without any reason merely by serving on tenant a 30-day notice to quit followed with possessory action, but Rent Act restricts landlord's rights and protects tenant from eviction except on one of grounds specified. Code 1940, §§ 45-820, 45-904, 45-1605(b). *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. D.C. Code 1940, §§ 45-820, 45-904. *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

A tenant holding over and paying rent becomes a "tenant by sufferance" in sense only that his tenancy may be terminated by tenant or landlord on 30 days' notice in accordance with statute. D.C. Code 1940, §§ 45-820, 45-904. *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

§ 42-521. Estates from month to month or from quarter to quarter.

An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1035.)

Prior Codifications. — 1981 Ed., § 45-221.

1973 Ed., § 45-821.

CASE NOTES

In general.

Where landlord gave tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, landlord was entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. D.C. Code §§ 45-820,

45-821, 45-905, 45-908. *Wilson v. John R. Pinkett, Inc.*, 265 A.2d 778, 1970 D.C. App. LEXIS 293 (App. 1970).

A "tenancy from month to month" is a tenancy for a month certain plus an expectancy or possibility of continuation for one or more similar periods, and until rightful notice of termination is given this expectancy ripens at the turn of each month to a true tenancy for the

ensuing month. D.C. Code 1940, §§ 45-821, 45-902. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Notice of termination of tenancy from month to month cannot be made to expire at time other than end of month, notwithstanding Code provision allowing parties to lease to substitute a longer or shorter period of notice than the thirty days which would be otherwise required by Code. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Under lease "by the month" commencing on

20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

§ 42-522. Estates at will; termination; creation.

An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate shall not exist or be created except by express contract; provided, however, that in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036.)

Cross references. — Forcible entry and detainer, see §§ 16-1501 et seq., 22-3302.

Prior Codifications. — 1981 Ed., § 45-222. 1973 Ed., § 45-822.

CASE NOTES

ANALYSIS

In general.

Tenancy after foreclosure.

In general.

A tenant in possession of land sold at a foreclosure sale under a deed of trust becomes by operation of law the tenant of the purchaser (Construing Code of Law 1901, § 1036 [31 Stat. 1352, c. 854]). *Bliss v. Duncan*, 44 App.D.C. 93, 1915 U.S. App. LEXIS 2683 (1915).

A tenancy at will does not operate to impose contractual obligations, i.e., for the payment of rent, upon parties. D.C. Code 1981, § 45-222. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

A "tenancy at will" is an estate held by the joint will of lessor and lessee and such estate cannot exist or be created except by express contract. D.C. Code § 45-822. *Smith v. Town Center Management Corp.*, 329 A.2d 779, 1974 D.C. App. LEXIS 327 (1974).

Municipal Court for the District of Columbia was without jurisdiction of an action for the recovery of real estate on ground that defen-

dant held premises as a tenant at will of plaintiff, because of prior litigation involving the property wherein plaintiff was ordered to be credited with the rent actually collected, where no connection between the defendant and previous occupants was shown and plaintiff expressly disclaimed that defendant was in possession as result of an agreement with her. D.C. Code 1940, §§ 11-735, 16-501 et seq., 45-822, 45-910. *Spruill v. Brooks*, 68 A.2d 204, 1949 D.C. App. LEXIS 224 (Cr.App. 1949).

Tenancy after foreclosure.

Residential tenant's alleged violation of pre-foreclosure lease was not a basis for eviction; upon foreclosure of landlord's mortgage on the single-family dwelling, the lease was effectively extinguished and the tenant became a tenant-at-will. *Banks v. Eastern Sav. Bank*, 8 A.3d 1239, 2010 D.C. App. LEXIS 675 (2010).

Second-floor tenant's tenancy at will, after mortgagee purchased the single-family home at foreclosure sale relating to residential landlord's mortgage on the dwelling, was not assignable without mortgagee's consent. *Banks v.*

Eastern Sav. Bank, 8 A.3d 1239, 2010 D.C. App. LEXIS 675 (2010).

Doctrines of *res judicata* and collateral estoppel did not apply to bar landlord's action for writ of possession against tenant under Rental Housing Act based on nonpayment of rent after trial court had issued judgment in prior action for ejectment that tenant who held over after foreclosure sale had right of occupancy pursuant to terms of lease with original owner; prior case determined tenant's rights to remain possession under lease following landlord's purchase of property in foreclosure sale, and did not require determination of what tenant's obligations were to landlord. *Molla v. Sanders*, 981 A.2d 1197, 2009 D.C. App. LEXIS 466 (2009).

Statutory eviction restrictions applied to mortgagee's attempt to evict tenant who continued to live in her home after landlord defaulted on mortgage and mortgagee repurchased home at foreclosure sale, and restrictions superseded earlier enacted statutes which provided that tenant continuing in possession following foreclosure sale was tenant at will whose tenancy could be terminated by giving 30 days' of written notice. D.C. Code 1981, §§ 45-222, 45-1403, 45-1561, 45-1561(a). *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

Where real property is sold under foreclosure of a deed of trust, grantor of deed of trust, or

anyone in possession claiming under him, becomes tenant at will of purchaser at foreclosure and is entitled to 30 days' notice to quit. D.C. Code §§ 45-822, 45-903. *Thompson v. Mazo*, 245 A.2d 122, 1968 D.C. App. LEXIS 189 (App. 1968).

Where new owner, following foreclosure sale of leased premises, made demand for August rent, tenant was not faced with constructive eviction, which would excuse tenant's nonpayment to landlord of rent which was payable in advance on date prior to foreclosure sale, in view of facts that leasehold interest antedated deed of trust and that tenant remained in possession without interruption under changed conditions and terms after foreclosure sale as before. D.C. Code 1951, § 45-822. *Hyde v. Brandler*, 118 A.2d 398, 1955 D.C. App. LEXIS 225 (Cr.App. 1955).

Former owners of dwelling who personally resided therein were not "tenants" within Rent Act after foreclosure of second trust note, and therefore they were not entitled to protection of Rent Act provisions, notwithstanding that, under code section defining relationship between former owners and purchaser at foreclosure sale under defaulted mortgage or deed of trust, they became "tenants at will" of purchaser after foreclosure. D.C. Code 1940, §§ 11-735, 45-822, 45-1605(b), 45-1611; *Housing and Rent Act of 1947*, 50 U.S.C. Appendix, § 1881 et seq. *Surratt v. Real Estate Exchange*, 76 A.2d 587, 1950 D.C. App. LEXIS 183 (Cr.App. 1950).

§ 42-523. Provisions applicable to personal property.

All the provisions of this chapter and of §§ 42-302 to 42-304 [repealed], 42-703, and 42-704 shall apply to personal property generally except where from the nature of the property they are inapplicable.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036; June 30, 1902, 32 Stat. 538, ch. 1329.)

Prior Codifications. — 1981 Ed., § 45-223. 1973 Ed., § 45-823.

CASE NOTES

Tenancy by entireties.

Tenancy by the entireties may exist in personality as well as real property. D.C. Code

1981, § 45-223. *Finley v. Thomas*, 691 A.2d 1163, 1997 D.C. App. LEXIS 60 (1997).

CHAPTER 6. FORMS; COVENANTS AND WARRANTIES.

Sec.

42-601. Deed, mortgage, and lease forms.

42-602. Deeds of corporations; formal requisites; acknowledgment.

42-603. "Covenant" binds covenantor, covenantee, and their privies.

42-604. General warranty.

42-605. Special warranty.

42-606. Covenant of quiet enjoyment.

Sec.

42-607. Covenant against having encumbered land.

42-608. Covenant for further assurances; contracts to contain soil characteristics information.

42-609. Warranties void as to heirs; life tenants and certain parties not in possession.

§ 42-601. Deed, mortgage, and lease forms.

The following forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the said forms. Any other form conforming to the rules herein laid down shall be sufficient:

FEE SIMPLE DEED

This deed, made this _____ day of _____, in the year _____, by me, _____, of _____, witnesseth, that in consideration of (here insert consideration), I, the said _____, do grant unto (here insert grantee's name), of _____, all that (here describe the property).

Witness my hand and seal. _____ [Seal.]

DEED BY SPOUSE OR DOMESTIC PARTNER

This deed, made this _____ day of _____, in the year _____, by us, _____ and _____, his or her spouse or domestic partner, of _____, witnesseth, that in consideration of _____, we, the said _____ and his or her spouse or domestic partner, do grant unto _____, of _____, and so forth.

Witness our hands and seals. _____ [Seal.]

_____ [Seal.]

DEED OF LIFE ESTATE

This deed, made this _____ day of _____, in the year _____, by me, _____, of _____, witnesseth, that in consideration of _____, I, the said _____, do grant unto _____, of _____, all that (here describe the property), to hold during his life and no longer.

Witness my hand and seal. _____ [Seal.]

DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this _____ day of _____, in the year _____, by me, _____, of _____, witnesseth, that whereas (here insert the consideration for the deed), I, the said _____, do grant unto _____, of _____, as trustee, the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon).

Witness my hand and seal. _____ [Seal.]

FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this _____ day of _____, in the year _____, by me, _____, trustee, of _____, witnesseth: Whereas by a decree of (here insert court) passed on the _____ day of _____, in the cause of _____ versus _____, I, the said _____, was appointed trustee to sell the land decreed to be sold, and have sold the same to _____; and said sale has been ratified by said court, and said _____ has fully paid the purchase money due on said sale; now, therefore, in consideration of the premises, I, the said _____, do grant unto _____, of _____, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal. _____ [Seal.]

EXECUTOR'S DEED

This deed, made this _____ day of _____, in the year _____, witnesseth, that I, _____, of _____, executor of the last will of _____, late of _____, deceased, under a power in said will contained, in consideration of _____, have sold and do hereby grant to _____, of _____, all that (here describe the property).

Witness my hand and seal. _____ [Seal.]

FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this _____ day of _____, in the year _____, witnesseth, that whereas I, _____, of _____, am indebted unto _____, of _____, in the sum of _____, payable _____, for which I have given to said _____ my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said _____ all that (here describe property), provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said _____ is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal. _____ [Seal.]

FORM OF LEASE

This lease, made this _____ of _____, in the year _____, between _____, of _____, and _____, of _____, witnesseth, that the said _____ doth lease unto the said _____, his executor, administrator, and assigns, all that (here describe the property) for the term of _____ years, beginning on the _____ day of _____, in the year _____, and ending on the _____ day of _____, in the year _____, the said _____ paying therefor the sum of _____ on the _____ day of _____ in each and every year (or month, as the case may be).

Witness our hands and seals. _____ [Seal.]
 _____ [Seal.]

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, ch. 16, subch. 5; June 30, 1902, 32 Stat. 533, ch. 1329; Sept. 12, 2008, D.C. Law 17-231, § 33(b), 55 DCR 6758.)

Cross references. — Sales and conveyances of public property, see § 10-801 et seq.

Prior Codifications. — 1981 Ed., § 45-501. 1973 Ed., § 45-301.

Effect of amendments. — D.C. Law 17-231

deleted the Deed by Husband and Wife form and inserted the Deed by Spouse or Domestic Partner form.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

CASE NOTES

In general.

An agreement between husband and wife, whereby wife promised to create in favor of certain children, upon death of husband, an estate in property held by husband and wife as tenants by the entirety, did not meet the requirements of a “deed”, and no estate or interest was conveyed thereby. D.C. Code 1940, §§ 45-106, 45-301. *Schooler v. Schooler*, 173 F.2d 299, 1948 U.S. App. LEXIS 2005 (C.A.D.C. 1948).

Where body of lease properly designated corporate lessor and individual lessee as such, transposition in attestation clause of words lessee and lessor in such manner as to make clause indicate that individual lessee was the corporation did not invalidate the lease, since intent of parties was perfectly apparent from

entire lease, and transposition was mere clerical error. D.C. Code 1951, §§ 45-106, 45-301. *Capital Linoleum Co. v. Savage*, 91 A.2d 564, 1952 D.C. App. LEXIS 213 (Cr.App. 1952).

Where apartment building project purchased from the government was conveyed to a Veterans’ Cooperative by a deed made February 2, 1948, but reciting that it was made “as of the 31st day of December 1947,” and stating that property was conveyed subject to all outstanding valid leaseholds, deed was subject to an outstanding leasehold of a tenant whose amended lease was dated as of January 2, 1948, since the tenant’s rights could not be affected by the predating of the deed. D.C. Code 1940, § 45-501. *Owens v. Liff*, 65 A.2d 921, 1949 D.C. App. LEXIS 188 (Cr.App. 1949).

§ 42-602. Deeds of corporations; formal requisites; acknowledgment.

The deed of a corporation shall be executed and acknowledged either (1) by an attorney-in-fact appointed for that purpose or (2) without appointment, by its president or a vice-president if also attested by the secretary or assistant secretary of the corporation.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 497; June 30, 1902, 32 Stat. 531, ch. 1329; Apr. 27, 1994, D.C. Law 10-110, § 2(c), 41 DCR 1023.)

Cross references. — Effective date of deeds, see § 42-401.

Failures in formal requisites of an instrument, fraudulent acts, see § 42-404.

Prior Codifications. — 1981 Ed., § 45-502. 1973 Ed., § 45-302.

Legislative history of Law 10-110. — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and

assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

CASE NOTES

In general.

At common law, a deed is valid between

parties if signed, sealed, and delivered, though not acknowledged. *Munsey Trust Co. v. Alexan-*

der, Inc., 42 F.2d 604, 1930 U.S. App. LEXIS 4314 (1930).

Statutory requirements respecting acknowledgment of deed to authorize recording thereof do not affect validity of unacknowledged deed as between parties. *Munsey Trust Co. v. Alexander, Inc.*, 42 F.2d 604, 1930 U.S. App. LEXIS 4314 (1930).

Lease signed and sealed in corporate lessor's name held valid as between parties, though not

acknowledged nor containing power of attorney to acknowledge instrument. Code, § 492, as amended by Act June 30, 1902, and § 497 (D.C. Code 1929, T. 25, § 116 and § 142). *Munsey Trust Co. v. Alexander, Inc.*, 42 F.2d 604, 1930 U.S. App. LEXIS 4314 (1930).

Deed of corporation held executed in compliance with statute. *Eggleston v. Wayland*, 10 F.2d 642, 1925 U.S. App. LEXIS 2283 (1925).

§ 42-603. "Covenant" binds covenantor, covenantee, and their privies.

When, in any deed, the word "covenant" is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 505; June 30, 1902, 32 Stat. 531, ch. 1329.)

Prior Codifications. — 1981 Ed., § 45-503. 1973 Ed., § 45-303.

CASE NOTES

In general.

Where all deeds from the original owners of lots in a city subdivision contain the same restrictive covenants designed to carry out the general scheme of improvement of the subdivision, such covenants inure to the benefit of the purchasers and subsequent owners of the lots.

McNeil v. Gary, 40 App.D.C. 397, 1913 U.S. App. LEXIS 2090 (1913).

The erection on the rear of a lot already improved by a dwelling house of a stable held within the prohibition of covenants of the original owner's grant. *McNeil v. Gary*, 40 App.D.C. 397, 1913 U.S. App. LEXIS 2090 (1913).

§ 42-604. General warranty.

A covenant by the grantor, in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 506.)

Prior Codifications. — 1981 Ed., § 45-504. 1973 Ed., § 45-304.

§ 42-605. Special warranty.

A covenant by a grantor in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty,"

shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 507.)

Prior Codifications. — 1981 Ed., § 45-505. 1973 Ed., § 45-305.

CASE NOTES

In general.

Where grantor executing trust deeds creating junior liens warranted the property against persons claiming through her and covenanted to execute any necessary further assurances, the effect of the covenants in the trust deeds creating the junior liens was limited by their terms and by the fact that the grantor possessed and intended to convey only an equity of

redemption from prior trusts. D.C. Code 1940, § 45-305. *Thompson v. Lawson*, 132 F.2d 21, 1942 U.S. App. LEXIS 2524 (1942).

A lessor may waive the breach of a specific covenant by delay in enforcement, or by subsequent acceptance of rent. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

§ 42-606. Covenant of quiet enjoyment.

A covenant by the grantor in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times after March 3, 1901, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 508.)

Prior Codifications. — 1981 Ed., § 45-506. 1973 Ed., § 45-306.

CASE NOTES

In general.

Where landowner, as lessor, entered into a contract of lease for restaurant purposes, he impliedly warranted title and quiet possession, and, in such circumstances, it was not incumbent upon lessee to search lessor's title to determine if there was a covenant in lessor's deed against commercial use but lessee was entitled to rely upon the warranty. *Schwartz v.*

Westbrook, 154 F.2d 854, 1946 U.S. App. LEXIS 2122 (1946).

A lessee is not chargeable with notice of lessor's record title and is not precluded thereby from recovering loss sustained in preparing to occupy premises which lessor is unable to deliver by reason of a limitation in his deed. *Schwartz v. Westbrook*, 154 F.2d 854, 1946 U.S. App. LEXIS 2122 (1946).

§ 42-607. Covenant against having encumbered land.

A covenant by a grantor, in a deed of land, "that he has done no act to encumber said land," shall be construed to have the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act,

deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected or encumbered in title, estate, or otherwise.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 509.)

Prior Codifications. — 1981 Ed., § 45-507. 1973 Ed., § 45-307.

§ 42-608. Covenant for further assurances; contracts to contain soil characteristics information.

(a) A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

(b) All contracts drawn for the purpose of conveying real property in the District of Columbia shall contain the following information:

(1) The characteristic of the soil on the property in question as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 and as shown on the Soil Maps of the District of Columbia at the back of that publication; and

(2) A notation that for further information the buyer can contact a soil testing laboratory, the District of Columbia Department of Environmental Services or the Soil Conservation Service of the Department of Agriculture.

(Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 510; Sept. 28, 1977, D.C. Law 2-23, § 3, 24 DCR 3342.)

Cross references. — Erosion and sediment control pursuant to this section, powers and duties, see § 8-1707.

Prior Codifications. — 1981 Ed., § 45-508. 1973 Ed., § 45-308.

Legislative history of Law 2-23. — Law 2-23, the "Soil Erosion and Sedimentation Control Act of 1977," was introduced in Council and assigned Bill No. 2-81, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first

and second readings on May 31, 1977 and June 14, 1977, respectively. Signed by the Mayor on July 11, 1977, it was assigned Act No. 2-54 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 42-609. Warranties void as to heirs; life tenants and certain parties not in possession.

All warranties which shall be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect, and likewise all

collateral warranties, of any lands, tenements or hereditaments, by any ancestor, who has no estate of inheritance in possession in the same shall be void against the heir.

(4 Anne, ch. 16, § 21, 1705; Kilty Rep., 246; Alex. Br. Stat. 662; Comp. Stat., D.C., 496, § 33.)

Prior Codifications. — 1981 Ed., § 45-509. 1973 Ed., § 45-309.

CHAPTER 7. INTERPRETATION OF INSTRUMENTS.

Sec.

42-701. Words of inheritance unnecessary.

42-702. "Grant" or "bargain and sell" passes whole estate and interest.

42-703. Remainder to heirs of life tenant; rule in Shelley's case abolished.

Sec.

42-704. Posthumous children.

42-705. Construction of words importing want or failure of issue.

§ 42-701. Words of inheritance unnecessary.

No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary intention shall appear by express terms or be necessarily implied therein.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 502.)

Prior Codifications. — 1981 Ed., § 45-401.

1973 Ed., § 45-201.

CASE NOTES

ANALYSIS

Construction of instruments.

In general.

Law governing.

Construction of instruments.

Statute, which provided that no words of inheritance should be necessary in a will to create a fee simple estate but every devise of realty should be construed and held to pass a fee simple estate or other entire estate of testator unless a contrary intention should appear by express terms or be necessarily implied therein, was applicable to construction of will in which testatrix gave to certain unrelated persons as joint tenants with rights of survivorship all of her right, title and interest in her residence and which provided that such persons had willed that at their demise or at their desire the residue of testatrix' estate should go to testatrix' grandchildren by testatrix' son. D.C. Code § 45-201. In re Estate of Glover, 463 F.2d 1238, 1972 U.S. App. LEXIS 9882 (C.A.D.C. 1972).

When word "heir" is used in will as one of limitation, it must be given that effect, but contrary is true, if its use in context clearly indicates that it is intended to constitute a disposition by purchase. Greenwood v. Page, 138 F.2d 921, 1943 U.S. App. LEXIS 2712 (1943).

The word "heirs" in testamentary provision that shares of any of testator's grandchildren dying before death of last survivor of testator's children, to whom will devised life estates with remainders to grandchildren, should be divided

equally among deceased grandchildren's legal heirs, was word of purchase, describing merely class of beneficiaries to take, so as to require adoption of interpretation of such word as including half-bloods by courts of Michigan, in which testator resided, and to entitle half-brother of testator's grandchild, predeceasing testator and his last surviving child, to share equally with deceased grandchild's surviving full sister in such grandchild's share. Greenwood v. Page, 138 F.2d 921, 1943 U.S. App. LEXIS 2712 (1943).

Deeds and wills must be construed in accordance with intention of parties in so far as it can be discerned from text of instrument. D.C. Code 1961, §§ 45-201, 45-203. Simmons v. Rosemond, 223 F. Supp. 61, 1963 U.S. Dist. LEXIS 6478 (D.D.C.1963).

In general.

The requirement that words of art, such as "and his heirs" or "in fee simple," or any similar phrase, be used in order to create estate in fee simple has been abolished in District of Columbia by statute providing in effect that a conveyance or devise to A without anything more grants an estate in fee simple unless the intention of the parties appears to be to the contrary. D.C. Code 1961, § 45-201. Simmons v. Rosemond, 223 F. Supp. 61, 1963 U.S. Dist. LEXIS 6478 (D.D.C.1963).

Law governing.

Generally, the law of situs of realty governs not only its descent, alienation and transfer, but effect and construction of wills and other

conveyances. *Greenwood v. Page*, 138 F.2d 921, 1943 U.S. App. LEXIS 2712 (1943).

§ 42-702. “Grant” or “bargain and sell” passes whole estate and interest.

The word “grant,” and the phrase “bargain and sell,” or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 503; June 30, 1902, 32 Stat. 531, ch. 1329.)

Prior Codifications. — 1981 Ed., § 45-402. 1973 Ed., § 45-202.

§ 42-703. Remainder to heirs of life tenant; rule in Shelley’s case abolished.

Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1027.)

Cross references. — Personal property, applicable laws, see § 42-523.

Prior Codifications. — 1981 Ed., § 45-403. 1973 Ed., § 45-203.

CASE NOTES

In general.

Where death of testator, devising life estate to his daughter with remainder over in fee to her children, occurred before enactment of code, common law applied so as to make children of daughter joint tenants with right of survivorship rather than tenants in common. D.C. Code 1929, T. 25, §§ 133, 276. *Noyes v. Parker*, 92 F.2d 562, 1937 U.S. App. LEXIS 4639 (1937).

Codicil of will providing that, because of birth of children to testator’s daughter, his executors should pay all sums and deliver all realty previously bequeathed to daughter “in trust for her and to her children,” indicated intention to

devise to daughter, not fee-simple estate in realty, but life estate with remainder over in fee to children, since gift was not to daughter alone but to her “children,” which was used as word of purchase and not limitation. *Noyes v. Parker*, 92 F.2d 562, 1937 U.S. App. LEXIS 4639 (1937).

The rule in Shelley’s case has been abolished in District of Columbia by statute providing in effect that if one grants an estate to A for life, remainder to his heirs, A receives a life estate and his heirs take a fee simple upon his death. D.C. Code 1961, § 45-203. *Simmons v. Rosemond*, 223 F. Supp. 61, 1963 U.S. Dist. LEXIS 6478 (D.D.C.1963).

§ 42-704. Posthumous children.

Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person.

(Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1028.)

Cross references. — Personal property, applicable laws, see § 42-523.

Prior Codifications. — 1981 Ed., § 45-404. 1973 Ed., § 45-204.

§ 42-705. Construction of words importing want or failure of issue.

In any deed or will of real or personal estate in the District of Columbia, executed after March 3, 1901, the words “die without issue,” or the words “die without leaving issue,” or the words “have no issue,” or other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear in the instrument.

(Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 504.)

Prior Codifications. — 1981 Ed., § 45-405.

1973 Ed., § 45-205.

CASE NOTES

In general.

Under a devise to a grandson in fee, but, in case he “should die without issue,” then to a son and daughter of the testator, the grandson takes a fee simple estate, defeasible only in event of his death without having had issue; and a codicil providing that in event the grand-

son should die before the testator, or before the estate is settled, the devise should become void, is not inconsistent with such construction of the words “die without issue.” *Herrell v. Herrell*, 47 App.D.C. 30, 1917 U.S. App. LEXIS 2591 (1917).

CHAPTER 8. MORTGAGES AND DEEDS OF TRUST.

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| <p>Sec.</p> <p>42-801. Execution, acknowledgment, and recordation in same manner as deeds.</p> <p>42-802. Duty of Recorder.</p> <p>42-803. Estate of mortgagee or trustee; conveyance thereof.</p> <p>42-804. Survival of mortgagee's or trustee's title.</p> <p>42-805. While action pending, money due payable to mortgagee or court; effect thereof.</p> <p>42-806. Decree or order without hearing where defendant files request and plaintiff files admission.</p> <p>42-807. Limitations upon right of redemption in §§ 42-805 and 42-806.</p> <p>42-808. Conveyance or assurance by infant following court order.</p> <p>42-809. Conveyance or assurance by infant trustee or mortgagee under court order.</p> <p>42-810. Mortgagee may redeem prior mortgage; prior mortgage may not bar.</p> <p>42-811. Appointment of trustee in event of death of mortgagee or trustee; procedure; summary decree.</p> <p>42-812. Equity practice followed where answer sets up defense against foreclosure.</p> | <p>Sec.</p> <p>42-813. Replacement of deceased, appointed trustee.</p> <p>42-814. Petition for new trustee; causes; procedure; written agreement of parties.</p> <p>42-815. Application to court to fix terms and determine notice of sale; notice under power of sale provision.</p> <p>42-815.01. Right to cure residential mortgage foreclosure default.</p> <p>42-815.02. Foreclosure mediation.</p> <p>42-815.03. Establishment of Foreclosure Mediation Fund.</p> <p>42-816. Sale of property — Deficiency judgments; limitations thereon; relief in suit to enforce vendor's lien.</p> <p>42-817. Sale of property — Amount creditor to pay if purchaser.</p> <p>42-818. Commission to mortgagee or trustee; rates; when advertised sale not held.</p> <p>42-818.01. Tracking addresses.</p> <p>42-818.02. Procedures for release of deed of trust.</p> <p>42-819. Petition for deed of release after death of mortgagee or trustee; procedure; summary determination.</p> <p>42-820. Conveyance by and for individuals with mental disabilities following court order.</p> |
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§ 42-801. Execution, acknowledgment, and recordation in same manner as deeds.

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 2551.)

Prior Codifications. — 1981 Ed., § 45-701. 1973 Ed., § 45-601.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For

Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — Law 14-132, the “Home Loan Protection Act of 2002”, was introduced in Council and assigned Bill No. 14-515, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 5, 2002, and February 19, 2002, respectively. Signed by the Mayor on March 1, 2002, it was assigned Act No. 14-296 and transmitted to both Houses of Congress for its review. D.C. Law 14-132 became effective on May 7, 2002.

Editor’s notes. — Section 602(b) of D.C. Law 14-132, as amended by section 42(b) of

D.C. Law 14-213, provided: “Sections 95, 521, 522, 523, 534, 535, 536, 537, 538, 539, 539a, 544, and 545 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code §§ 42-801, 42-802, 42-803, 42-804, 42-811, 42-812, 42-813, 42-814, 42-815, 42-815.01, 42-816, 42-817, 42-818, and 42-819) and sections 1, 2, 3, 11, 13, 14, and 26 of the Compiled Statutes of the District of Columbia (D.C. Official Code §§ 42-805, 42-806, 42-807, 42-808, 42-809, 42-810, and 42-820), and the regulations adopted thereunder, are revived as of November 6, 2001.”

CASE NOTES

ANALYSIS

Bona fide purchasers.

Error in recording.

In general.

Notice.

Bona fide purchasers.

Where vendor conveyed property and purchaser without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing in deeds of trust against the property, fraud in relationship between the vendor and the purchaser did not give vendor a claim superior to that of the trust holders, who occupied the position of bona fide purchasers. D.C. Code 1951, §§ 45-501, 45-601. *Osin v. Johnson*, 243 F.2d 653, 1957 U.S. App. LEXIS 2976 (C.A.D.C. 1957).

Error in recording.

Bank's security interest in Chapter 11 debtor's residence was perfected upon recordation of second deed of trust that erroneously described property as being in square 452 instead of square 1452, and thus debtor could not exercise strong-arm powers to avoid security interest, even if error resulted in improper indexing in square and lot index, where deed of trust contained correct street address and referred to instrument number of deed under which debtor took title to property; information in deed of trust was sufficient to put subsequent purchasers on notice of lien. D.C. Code 1981, §§ 45-701, 45-801; Bankr.Code, 11 U.S.C. § 544(a). *Harris v. Maryland Nat'l Bank* (In re Harris), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

In general.

Trustee in reorganization for corporations under Chapter X of Bankruptcy Act had standing to attack validity of deeds of trust held by claimants, notwithstanding contentions that

trustee was estopped from attacking validity and that it would be inequitable or would be windfall to corporations to have deeds of trust set aside. Bankr.Act, §§ 47, sub. a(8), 70, subs. c, e, e(1), 101 et seq., 11 U.S.C. §§ 75(a)(8), 110(c, e), (e)(1), 501 et seq.; D.C. Code §§ 15-102, 45-501, 45-601. In re Parkwood, Inc., 461 F.2d 158, 1971 U.S. App. LEXIS 7189 (C.A.D.C. 1971).

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. D.C. Code 1951, §§ 45-501, 45-601. *Osin v. Johnson*, 243 F.2d 653, 1957 U.S. App. LEXIS 2976 (C.A.D.C. 1957).

The right given a trustee in bankruptcy by Bankr.Act, §§ 70e, 67a, 67b, to set aside, as a preference under section 60a, a transfer which was ineffective as against creditors under a local recording statute, is not affected by the fact that the transfer is binding as between the parties to it. *Dulany v. Morse*, 39 App.D.C. 523, 1913 U.S. App. LEXIS 2029 (1913).

Requirements and effect of recordation of deed are statutory matters that must be determined by reference to governing legislative enactments. D.C. Code 1981, §§ 45-701, 45-801. *Harris v. Maryland Nat'l Bank* (In re Harris), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Notice.

A deed, given as security for a loan, executed more than four months previously, but with-

held from record until the day preceding the filing of a petition in bankruptcy against the grantor, whose creditors had no notice of its existence, will be set aside as a voidable preference under section 60a, Bankr.Act, irrespective of the sufficiency of the consideration or of the good faith of the parties, where the local statute makes a deed or mortgage effective as against creditors without notice only from the time of recording it. *Dulany v. Morse*, 39 App.D.C. 523, 1913 U.S. App. LEXIS 2029 (1913).

Recordation of deed of trust provides constructive notice to subsequent purchasers or lienors of all matters that would be disclosed by examination of that deed of trust. D.C. Code

1981, §§ 45-701, 45-801. *Harris v. Maryland Nat'l Bank* (In re *Harris*), 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

Even if creditor's lien on corporate debtor's fixtures could be viewed as mortgage, creditor's failure to list corporation as owner of collateral would not give notice to innocent third parties searching grantor-grantee index, and thus such failure would preclude perfection of lien. D.C. Code 1981, §§ 28:9-402(1, 6), 45-701, 45-801. In re *New 5510, Inc.*, 114 B.R. 317, 1990 Bankr. LEXIS 1085 (1990).

§ 42-802. Duty of Recorder.

It shall be the duty of the Recorder of Deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 2551.)

Prior Codifications. — 1981 Ed., § 45-702. 1973 Ed., § 45-602.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-803. Estate of mortgagee or trustee; conveyance thereof.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by agreement of the parties pursuant to § 42-814(b) or by judicial decree for the causes hereinafter mentioned; provided, that nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee simple under a deed made by the mortgagee, trustee, or new trustee in pursuance of the powers conferred by the mortgage or deed of trust.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(a); Apr. 3, 2001, D.C. Law

13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-703. 1973 Ed., § 45-603.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

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For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Breach of fiduciary duties.

Due process.

Estate of trustee.

In general.

Removal or substitution of trustees.

Sale under deed of trust.

Trustee's failure to perform.

Breach of fiduciary duties.

The exercise of a power of sale under a deed of trust by a trustee who is, or is associated with, the owner of the debt secured, is improper. *Canelacos v. Hollway*, 123 F.2d 934, 1941 U.S. App. LEXIS 2850 (1941).

Mere showing of conflict of interest of trustees under deeds of trust, who were also representatives of lender, was not enough to find that trustees had breached their fiduciary obligations by instituting foreclosure proceedings after borrowers' defaults; to find such a breach, a showing of neglect of duty or misconduct of trustees was required. *Johnson v. Inter-City Mortg. Corp.*, 366 A.2d 435, 1976 D.C. App. LEXIS 407 (1976).

Trustees, under deeds of trust, who were also officers and controlling stockholders of lender, did not violate their fiduciary duties by instituting foreclosure proceedings after borrowers' defaults and after exercise of a valid acceleration of indebtedness clause, in absence of neglect of duty or misconduct by trustees. *Johnson v. Inter-City Mortg. Corp.*, 366 A.2d 435, 1976 D.C. App. LEXIS 407 (1976).

Due process.

Claim that extrajudicial mortgage foreclosure procedures of District of Columbia were violative of due process clause of Fifth Amendment was not so substantial as to require

convening of a three-judge court where there was no evidence of a significant governmental involvement in that power of sale was created, not through governmental enactment, but by private consensual agreement. 18 U.S.C. § 2282; D.C. Code §§ 45-301, 45-603, 45-615; U.S. Const. Amend. 5. *Bryant v. Jefferson Federal Sav. & Loan Asso.*, 509 F.2d 511, 1974 U.S. App. LEXIS 5758 (C.A.D.C. 1974).

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. 18 U.S.C. § 2282; D.C. Code §§ 45-301, 45-603, 45-615; U.S. Const. Amend. 5. *Bryant v. Jefferson Federal Sav. & Loan Asso.*, 509 F.2d 511, 1974 U.S. App. LEXIS 5758 (C.A.D.C. 1974).

Claim that homeowners were deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty to foreclose and sell property by public auction without hearing for homeowner prior to sale was so insubstantial that three-judge court would not be convened in action for injunction restraining enforcement of statutes, in view of provisions that no such foreclosure sale may take place unless holder of note secured by mortgage is given notice 30 days in advance of sale and permitting extrajudicial foreclosure only when instrument contains power of sale clause if owner defaults in payments. D.C. Code §§ 45-301, 45-603, 45-615; 18 U.S.C. § 2282; U.S. Const. Amends. 5, 14. *Young v. Ridley*, 309 F. Supp. 1308, 1970 U.S. Dist. LEXIS 12555 (D.D.C.1970).

Fact that loan, which was used to buy house and which was secured by subsequently foreclosed mortgage, was guaranteed by Veterans Administration did not constitute sufficient governmental involvement in the foreclosure so as to make Fifth Amendment's due process clause applicable to foreclosure and sale. U.S. Const. Amend. 5; D.C. Code §§ 45-301, 45-603, 45-615. *Simpson v. Jack Spicer Real Estate, Inc.*, 396 A.2d 212, 1978 D.C. App. LEXIS 583 (1978).

Estate of trustee.

The deed from a trustee in a mortgage conveys whatever title he had, although it recites a decree of foreclosure; since it will not be assumed from this recital that the trustee acted only by virtue of the power which the decree conferred. *Chesapeake Beach Ry. Co. v. Washington, P. & C.R. Co.*, 26 S.Ct. 25, 1905 U.S. LEXIS 1027 (U.S. Dist. Col. 1905).

No constitutional or fundamental right of property is impaired by a statutory provision, Code, §§ 534-538, D.C. Code 1929, T. 25, §§ 201-204, 209, that the legal title of a trustee in a deed of trust or mortgage shall not descend to his heirs, or that, if it does, it may be disregarded, and may be reinvested in some appointee of the court without reference to such heirs; such a trustee being no more than a mere agent of the grantor or mortgagor and the mortgagee to carry into effect the contract between them. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

Trustee under deed of trust is deemed to have qualified fee simple estate which may pass to his or her heirs. D.C. Code 1981, § 45-703. *District of Columbia v. Mayhew*, 601 A.2d 37, 1991 D.C. App. LEXIS 338 (1991), remanded by 672 A.2d 1075, 1996 D.C. App. LEXIS 31 (D.C. 1996).

Deed of trust is equivalent of common-law mortgage, in effect creating three-party mortgage transaction. D.C. Code 1981, § 45-703. *District of Columbia v. Mayhew*, 601 A.2d 37, 1991 D.C. App. LEXIS 338 (1991), remanded by 672 A.2d 1075, 1996 D.C. App. LEXIS 31 (D.C. 1996).

Trustee under deed of trust is entitled to due process protection under Fifth Amendment; trustee's fiduciary duties to both noteholder and borrower, including duty to provide material information under some circumstances, lends concrete substance to trustee's qualified fee simple. D.C. Code 1981, § 45-703; U.S.C. Const. Amend. 5. *District of Columbia v. Mayhew*, 601 A.2d 37, 1991 D.C. App. LEXIS 338 (1991), remanded by 672 A.2d 1075, 1996 D.C. App. LEXIS 31 (D.C. 1996).

In general.

A receiver owes the affirmative duty to secure the largest returns for the estate at a sale of

property under a trust deed given to secure a note to the estate, and where he placed himself in a position in which his personal interests might be antagonistic to those of his trust by an agreement to share profits with the purchasers at the trustee's sale, he is accountable to the estate for all the profits obtained by him and those who associated with him in the matter, though the estate was not injured thereby. *Jackson v. Smith*, 41 S.Ct. 200, 1921 U.S. LEXIS 1855 (U.S. Dist. Col. 1921).

The duty of the trustee under a deed to secure a note to an estate in hands of a receiver to secure the largest amount possible at the sale, which relieves the receiver of any obligation to the maker of the note, does not relieve him of his obligation to the estate, or permit him to retain a profit made by him through an agreement with the purchaser at the trustee's sale. *Jackson v. Smith*, 41 S.Ct. 200, 1921 U.S. LEXIS 1855 (U.S. Dist. Col. 1921).

Removal or substitution of trustees.

Where one of two trustees died and surviving trustee refused to act, trustee appointed as substitute in place of surviving trustee only, held authorized to sell property without there being substitution of another trustee for deceased trustee. D.C. Code 1929, T. 25, §§ 193, 194, 201, 204, 209. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

Where surviving trustee named in trust deed refused to act on death of other trustee, trustee appointed by court to succeed surviving trustee had all powers vested in original trustees and, in absence of contrary instructions by court, could proceed in accordance with terms of trust. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

The service by publication on one of two deed of trust trustees, who has absconded or departed from the jurisdiction and whose whereabouts is unknown, is not necessary to support a decree substituting a trustee in his place, under Code, §§ 534-538 (D.C. Code 1929, T. 25, §§ 201-204, 209). It is the fact of the absence of the trustee from the jurisdiction that operates, when proved in a court of equity, to divest his title and to authorize the court to appoint another person in his place. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

The removal by a court of equity of a trustee in a deed of trust who has absconded or removed from the jurisdiction impairs no vested right, nor does any such impairment result from the substitution by the statute of a summary proceeding for that purpose for a plenary proceeding. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

The removal by a court of equity of a trustee in a deed of trust who has absconded or removed from the jurisdiction impairs no contrac-

tual obligation, nor does any such impairment result from the substitution by statute of a summary proceeding for that purpose for the plenary proceeding. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

Sale under deed of trust.

A fair sale under deed of trust, to an innocent purchaser for value, should not be set aside because of a trustee's interest in the debt which has been disclosed to the debtor, since under such circumstances there is no good reason for disappointing the reasonable expectations of the purchaser. *Canelacos v. Hollway*, 123 F.2d 934, 1941 U.S. App. LEXIS 2850 (1941).

Where trustees did not conceal their interest in property from debtor executing deed of trust, sale under deed of trust was well advertised and was conducted by reputable auctioneers, debtor made no objection to sale until nearly five months after sale, but expressed approval to purchasers, innocent purchasers for value and strangers to the trustees were entitled to specific performance of their contract of purchase together with their actual damages, if any, but not punitive damages, and judgment requiring the purchasers to account for rents and profits, less certain compensation and expenses on theory that the sale was void, was erroneous. *Canelacos v. Hollway*, 123 F.2d 934, 1941 U.S. App. LEXIS 2850 (1941).

Sale of realty under trust deed by substituted trustee after eleven days' notice held authorized, where trustors had notice of proposed substitution and sale and trust itself provided terms and conditions on which sales should be

had; judicial sales act requiring four weeks' advertisement of sale not being applicable. 18 U.S.C. §§ 2001, 2002, 2004; D.C. Code 1929, T. 25, § 205. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

In suit by trustors to set aside sale under trust deed, sale was not rendered invalid by alleged fact that court appointed employee of beneficiaries' attorney in place of surviving trustee who had refused to act and that court was in ignorance of such relationship where trustors had opportunity to inform court of any disqualification of proposed trustee, and it was not shown trustors did not know of such relationship. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

An agreement by the receiver of a building association with his attorney and a third person to purchase property at its sale by the trustee under a deed of trust securing a debt to the association is not such a violation of his duty as to impress a constructive trust in favor of a succeeding receiver on the profits of a resale, where the sale was regularly and fairly conducted, with competitive bidding, and in good faith by the trustee, and the price obtained was not inadequate, and the association's interests were not prejudiced. *Smith v. Jackson*, 48 App.D.C. 565, 1919 U.S. App. LEXIS 2355 (1919).

Trustee's failure to perform.

The refusal or disability of a trustee to perform the trust is the equivalent in equity of a renunciation of the legal estate. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

§ 42-804. Survival of mortgagee's or trustee's title.

Whenever a mortgage or deed of trust to secure a debt is executed to 2 or more mortgagees or trustees in fee simple, upon the death of any 1 or more of them the legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid.

(Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-704. 1973 Ed., § 45-604.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending

and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

In general.

Where one of two trustees died and surviving trustee refused to act, trustee appointed as substitute in place of surviving trustee only, held authorized to sell property without there being substitution of another trustee for deceased trustee. D.C. Code 1929, T. 25, §§ 193, 194, 201, 204, 209. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

Where surviving trustee named in trust deed refused to act on death of other trustee, trustee appointed by court to succeed surviving trustee had all powers vested in original trustees and, in absence of contrary instructions by court, could proceed in accordance with terms of trust. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

§ 42-805. While action pending, money due payable to mortgagee or court; effect thereof.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their

heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint.

(7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D.C., p. 395, § 1; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-705. 1973 Ed., § 45-605.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1,

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-806. Decree or order without hearing where defendant files request and plaintiff files admission.

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgages, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit.

(7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat., D.C., p. 396, § 2; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-706. 1973 Ed., § 45-606.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-807. Limitations upon right of redemption in §§ 42-805 and 42-806.

Sections 42-805 and 42-806 or anything therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer.

(7 Geo. 2, ch. 20, § 3, 1734; Kilty’s Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D.C., p. 397, § 3; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-707. 1973 Ed., § 45-607.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-808. Conveyance or assurance by infant following court order.

It shall and may be lawful to and for any person or persons, under the age of 18, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infant or infants were, at the time of making such conveyance, or assurance, of the full age of 18.

(7 Anne, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp.Stat., D.C., p. 79, § 13; July 22, 1976, D.C. Law 1-75, § 4(i), 23 DCR 1181; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-708. 1973 Ed., § 45-608.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 1-75. — Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-809. Conveyance or assurance by infant trustee or mortgagee under court order.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgag-

ees of full age are compellable to convey or assign their trust, estates, or mortgages.

(7 Anne, ch. 19, § 2, 1708; Kilty's Rep. 247; Alex. Br. Stat. 680; Comp. Stat., D.C., p. 79, § 14; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b) 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-709. 1973 Ed., § 45-609.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-810. Mortgagee may redeem prior mortgage; prior mortgage may not bar.

If it so happen there be more than 1 mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; anything therein contained to the contrary thereof in anywise notwithstanding.

(4 & 5 W. & M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D.C. 237, § 26; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-710. 1973 Ed., § 45-610.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-811. Appointment of trustee in event of death of mortgagee or trustee; procedure; summary decree.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the court having probate jurisdiction, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 42-814(b) and the execution of the trusts of said deed of trust by such new trustee.

(Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(b); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(1); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-711. 1973 Ed., § 45-611.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1,

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Conclusiveness of appointment.
Failure to perform.
In general.
Notice of proceedings.
Rights of substituted trustees.

Conclusiveness of appointment.

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was *res judicata*, precluding mortgagor's successor from raising same question in subsequent suit to enjoin the sale. D.C. Code 1940, §§ 45-611, 45-614. *Mergardt v. Colonial-American Nat. Bank of Roanoke*, 140 F.2d 701, 1944 U.S. App. LEXIS 4018 (1944).

Failure to perform.

The refusal or disability of a trustee to perform the trust is the equivalent in equity of a renunciation of the legal estate. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

In general.

Although secured noteholder had previously successfully brought suit for substitution of trustees under trust deed, subsequent substitution or reappointment of same trustees in foreclosure suit by other noteholders held harmless to property owners (D.C. Code 1929, T. 25, § 204). *Totten v. Harlowe*, 88 F.2d 755, 1936 U.S. App. LEXIS 3359 (1936).

Mortgagee held entitled to appointment of trustees to replace others named in deed of trust and since deceased. *Dawson v. Taylor*, 4 F.2d 430, 1925 U.S. App. LEXIS 3002 (1925).

Notice of proceedings.

Though suit by single noteholder to procure substitution of trustees under trust deed securing 490 notes was not prosecuted as class suit, and no other noteholder appeared or was joined therein, substitution of trustees held validly made, in view of precise language of statute authorizing any party interested to seek ap-

pointment of new trustee, coupled with lack of procedural provisions for bringing in other parties, and fact that contrary construction might disturb land titles (D.C. Code 1929, T. 25, § 204). *Totten v. Harlowe*, 88 F.2d 755, 1936 U.S. App. LEXIS 3359 (1936).

The service by publication on one of two deed of trust trustees, who has absconded or departed from the jurisdiction and whose whereabouts is unknown, is not necessary to support a decree substituting a trustee in his place, under Code, §§ 534-538 (D.C. Code 1929, T. 25, §§ 201-204, 209). It is the fact of the absence of the trustee from the jurisdiction that operates, when proved in a court of equity, to divest his title and to authorize the court to appoint another person in his place. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

Rights of substituted trustees.

The removal by a court of equity of a trustee in a deed of trust who has absconded or removed from the jurisdiction impairs no vested right, nor does any such impairment result from the substitution by the statute of a summary proceeding for that purpose for a plenary proceeding. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

No constitutional or fundamental right of property is impaired by a statutory provision, Code, §§ 534-538, D.C. Code 1929, T. 25, §§ 201-204, 209, that the legal title of a trustee in a deed of trust or mortgage shall not descend to his heirs, or that, if it does, it may be disregarded, and may be reinvested in some appointee of the court without reference to such heirs; such a trustee being no more than a mere agent of the grantor or mortgagor and the mortgagee to carry into effect the contract between them. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

The removal by a court of equity of a trustee in a deed of trust who has absconded or removed from the jurisdiction impairs no contractual obligation, nor does any such impairment result from the substitution by statute of a summary proceeding for that purpose for the plenary proceeding. *Marshall v. Kraak*, 23 App.D.C. 129, 1904 U.S. App. LEXIS 5235 (1904).

§ 42-812. Equity practice followed where answer sets up defense against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-712. 1973 Ed., § 45-612.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-813. Replacement of deceased, appointed trustee.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in § 42-811 may be had to appoint a successor to him in the said trusts.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-713. 1973 Ed., § 45-613.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Authority of substituted trustee.
Sale by substituted trustee.

Authority of substituted trustee.

Where one of two trustees died and surviving trustee refused to act, trustee appointed as substitute in place of surviving trustee only, held authorized to sell property without there

being substitution of another trustee for deceased trustee. D.C. Code 1929, T. 25, §§ 193, 194, 201, 204, 209. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

Where surviving trustee named in trust deed refused to act on death of other trustee, trustee appointed by court to succeed surviving trustee had all powers vested in original trustees and, in absence of contrary instructions by court, could proceed in accordance with terms of trust.

Stokes v. Hinden, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

Sale by substituted trustee.

Sale of realty under trust deed by substituted trustee after eleven days' notice held authorized, where trustors had notice of proposed substitution and sale and trust itself provided terms and conditions on which sales should be had; judicial sales act requiring four weeks' advertisement of sale not being applicable. 18 U.S.C. §§ 2001, 2002, 2004; D.C. Code 1929, T. 25, § 205. Stokes v. Hinden, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

In suit by trustors to set aside sale under trust deed, sale was not rendered invalid by alleged fact that court appointed employee of beneficiaries' attorney in place of surviving trustee who had refused to act and that court was in ignorance of such relationship where trustors had opportunity to inform court of any disqualification of proposed trustee, and it was not shown trustors did not know of such relationship. Stokes v. Hinden, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

§ 42-814. Petition for new trustee; causes; procedure; written agreement of parties.

(a) In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in §§ 42-811 and 42-819; provided, that any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections.

(b) Notwithstanding the provisions of subsection (a) of this section, and notwithstanding any provision in a deed of trust to the contrary, whenever the grantors named in, and the persons secured by, the deed of trust (or their successors in interest) so desire, they may by written agreement executed and acknowledged in the same manner as an absolute deed substitute any trustee named in the deed of trust with a new trustee. No written instrument entered into pursuant to this subsection shall be effective as to any person not having actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the parties agreeing to the appointment of the new trustee shall be recorded among the land records in the Office of the Recorder of Deeds.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(d); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-714. 1973 Ed., § 45-614.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Conclusiveness of adjudication.

In general.

Parties.

Substitute trustee designated in deed of trust.

Conclusiveness of adjudication.

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was *res judicata*, precluding mortgagor's successor from raising same question in subsequent suit to enjoin the sale. D.C. Code 1940, §§ 45-611, 45-614. *Mergardt v. Colonial-American Nat. Bank of Roanoke*, 140 F.2d 701, 1944 U.S. App. LEXIS 4018 (1944).

Order appointing substitute trustee under trust deed securing note because bank which was former trustee became insolvent would not be *res judicata* as to any issue on merits between holder of secured note and makers thereof. D.C. Code 1929, T. 25, § 204. *Bowen v. Mount Vernon Sav. Bank*, 85 F.2d 396, 1936 U.S. App. LEXIS 4127 (1936).

In general.

Although secured noteholder had previously successfully brought suit for substitution of trustees under trust deed, subsequent substitution or reappointment of same trustees in foreclosure suit by other noteholders held harmless to property owners (D.C. Code 1929, T. 25, § 204). *Totten v. Harlowe*, 88 F.2d 755, 1936 U.S. App. LEXIS 3359 (1936).

Court properly appointed new trustee under trust deed, where original trustee was in receivership, and deed of trust disclosed that trustee was charged with duties requiring continuous attention, and interests of owners and bondholders required that office should not at any time be left vacant. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

Parties.

Though suit by single noteholder to procure substitution of trustees under trust deed securing 490 notes was not prosecuted as class suit, and no other noteholder appeared or was joined

therein, substitution of trustees held validly made, in view of precise language of statute authorizing any party interested to seek appointment of new trustee, coupled with lack of procedural provisions for bringing in other parties, and fact that contrary construction might disturb land titles (D.C. Code 1929, T. 25, § 204). *Totten v. Harlowe*, 88 F.2d 755, 1936 U.S. App. LEXIS 3359 (1936).

In suit by bank which was holder of note for appointment of substitute trustee for trust deed securing note, inferential and argumentative statement in maker's answer charging bank was without capacity to bring suit because bank was in hands of liquidating committee held insufficient to furnish basis for denying bank right to bring suit (D.C. Code 1929, T. 25, § 204). *Bowen v. Mount Vernon Sav. Bank*, 85 F.2d 396, 1936 U.S. App. LEXIS 4127 (1936).

Trust deed provision that trustees should be deemed representatives of bondholders, and that it should not be necessary to notify bondholders or make any bondholder party to any action, suit, or proceeding, held valid, and applied to suit for appointment of new trustee. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

Trust company named as trustee in deed of trust having become insolvent and having ceased to do business before beginning of suit for appointment of new trustee, failure to name it as party to suit held not error. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

Substitute trustee designated in deed of trust.

Under deed of trust, court, on resignation of first successor trustee, held authorized to appoint new trustee, as against contention that person named as second successor trustee in trust deed *ipso facto* became trustee (D.C. Code 1929, T. 25, Sec. 204). Though deed of trust provided that, in event any trustee thereunder should refuse to act, resign, be removed, or otherwise become incapable of acting as trustee, two persons named therein should be appointed first and second successor trustees respectively, facts disclosed that person named as first successor trustee was chairman of board of directors of corporation of which person named as second successor trustee was president, and that latter was also president of

trust company which was named as original trustee in trust deed, and that, on entry of order appointing another trust company as trustee on first successor trustee's resignation, first successor trustee was in jail, and that person designated as second successor trustee was awaiting trial on indictment charging fraud in use of mails and conspiracy and alleged embezzlement. Under circumstances, court in exercise of reasonable discretion was bound to make such appointment as it deemed to best interests of parties concerned. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

Right of person named in trust deed as second successor trustee to act as such held barred by laches, where he made no objection to appointment of trust company as second successor trustee until almost twenty months after appointment. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

Under deed of trust, court, on resignation of first successor trustee, held authorized to appoint new trustee, as against contention that person named as second successor trustee in trust deed ipso facto became trustee. D.C. Code 1929, T. 25, § 204. *Wright v. Pitts*, 66 F.2d 197, 1933 U.S. App. LEXIS 2588 (1933).

§ 42-815. Application to court to fix terms and determine notice of sale; notice under power of sale provision.

(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) In the case of a residential mortgage, as a condition of issuance of the notice to foreclose under subsection (c) of this section, a foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument, shall not take place unless the holder of the note secured by the deed of trust, mortgage, or security instrument, or its agent, shall:

(1)(A) Give written notice of default on a residential mortgage, in such format and containing such information as the Mayor shall, by rule, prescribe, by certified mail, postage prepaid, return receipt requested, and by first-class mail, to the borrower and, if different from the borrower, to the person who holds record title, of the real property encumbered by the deed of trust, mortgage, or security instrument at his or her last known address; and

(B) Send a copy of the notice required by subparagraph (A) of this paragraph to the Mayor; and

(2) Obtain a mediation certificate in accordance with § 42-815.02.

(c)(1)(A) A foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument, shall not take place unless the holder of the note secured by the deed of trust, mortgage, or security instrument, or its agent, gives written notice of the intention to foreclose, by certified mail, postage prepaid, return receipt requested, and by first-class mail, of the sale to the borrower and, if different from the borrower, to the person who holds the title of record, of the real property encumbered by the deed of trust, mortgage, or security instrument at his last known address.

(B) A copy of the notice required by subparagraph (A) of this paragraph shall be sent to the Mayor, at least 30 days in advance of the date of the sale.

(2) The notice shall be in such format and contain such information as the Mayor shall, by rule, prescribe.

(3) The Mayor shall give written acknowledgment to the holder of the

note, or its agent, on the day that he receives the notice, that the notice has been received, indicating the date of receipt of the notice.

(4) The 30-day period shall commence to run on the date of receipt of the notice by the Mayor.

(5) The notice required by this subsection in regard to the mortgages and deeds of trust shall be in addition to the notice described by subsection (b) of this section.

(d) The mediation certificate required by subsection (b)(2) of this section, and the notice required under subsection (c) of this section, shall be recorded in the land records of the District.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329; Oct. 12, 1968, 82 Stat. 1002, Pub. L. 90-566, § 1; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Mar. 12, 2011, D.C. Law 18-314, § 2(a), 57 DCR 12404.)

Prior Codifications. — 1981 Ed., § 45-715. 1973 Ed., § 45-615.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 18-314 rewrote subsec. (b); and added subsecs. (c) and (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

Legislative history of Law 18-314. — Law 18-314, the “Saving D.C. Homes from Foreclo-

sure Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-691, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 9, 2010, it was assigned Act No. 18-635 and transmitted to both Houses of Congress for its review. D.C. Law 18-314 became effective on March 12, 2011.

Delegation of Authority. — Delegation of Authority to the Commissioner of the Department of Insurance, Securities and Banking under the Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011, see Mayor’s Order 2011-51, March 2, 2011 (58 DCR 2267).

Editor’s notes. — Delegation of functions: Organization Order No. 101, Part IV-J, designated the Office of the Recorder of Deeds as the office of record for the receipt, filing, indexing, mailing and handling of notice of foreclosure sale received pursuant to subsection (b) of this section.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Accrual of action.

Acquiring possession after default.

Compliance with terms of instrument.

Due process.

In general.

Notice of foreclosure sale.

—In general.

—Length of notice, notice of foreclosure sale.

—Manner of notice, notice of foreclosure sale.

—Persons entitled to notice, notice of foreclosure sale.

Parties.

Pleadings.

Powers and duties of trustees.

Right to cure.

Summary judgment.

Accrual of action.

Home mortgagors' claim against mortgagee for breach of duty of good faith and fair dealing, relating to mortgagee's allegedly premature institution of foreclosure proceedings, listing of incorrect cure amount, and refusal to correct the cure amount and postpone the foreclosure sale, accrued, for limitations purposes, when the notice of foreclosure was issued; at such time, the fact of an injury could be readily determined. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Acquiring possession after default.

Under District of Columbia law, mortgagee's mere demand for possession of mortgaged premises following default is not a sufficient legal step to enable mortgagee to take possession of property for purpose of collecting rents and profits produced by the property. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 21 F.3d 1145, 1994 U.S. App. LEXIS 8701 (C.A.D.C. 1994).

Under District of Columbia law, mortgagees under a deed of trust must take proper affirmative legal steps to acquire possession of mortgaged premises upon default, and a mere demand is not sufficient. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 21 F.3d 1145, 1994 U.S. App. LEXIS 8701 (C.A.D.C. 1994).

Compliance with terms of instrument.

Sale of realty under trust deed by substituted trustee after eleven days' notice held authorized, where trustors had notice of proposed substitution and sale and trust itself provided

terms and conditions on which sales should be had; judicial sales act requiring four weeks' advertisement of sale not being applicable. 18 U.S.C. §§ 2001, 2002, 2004; D.C. Code 1929, T. 25, § 205. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

District of Columbia statute governing notice of foreclosure was not violated when foreclosure sale was postponed until six days after date for which it was originally scheduled; statute only required that notice be sent at least 30 days in advance of sale and deed of trust expressly gave trustees power to postpone sale by public announcement. D.C. Code 1981, § 45-715(b). *Young v. 1st Am. Fin. Servs.*, 992 F. Supp. 440, 1998 U.S. Dist. LEXIS 829 (1998).

Foreclosure sale in a privately-owned auction house open to the general public satisfied deed of trust requiring sale at "public auction." *Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

Nothing in deed of trust or in any applicable statute required that foreclosure sale take place at or near a courthouse; the only requirement was that the sale be conducted at a public auction. *Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

Since mortgage foreclosure sale was conducted in accordance with terms of deeds of trust authorizing such sale and statute allowed parties to prescribe the length of notice and terms of sale, court properly decreed sale to be valid despite subordinated lienholder's claims of irregularities with respect to person who was trustee, imposition of allegedly prohibited conditions on prospective bidders at sale and use of minimal advertising. D.C. Code § 45-615. *American Century Mortg. Investors v. Unionamerica Mortg. & Equity Trust*, 355 A.2d 563, 1976 D.C. App. LEXIS 522 (1976).

Due process.

Claim that extrajudicial mortgage foreclosure procedures of District of Columbia were violative of due process clause of Fifth Amendment was not so substantial as to require convening of a three-judge court where there was no evidence of a significant governmental involvement in that power of sale was created, not through governmental enactment, but by private consensual agreement. 18 U.S.C. § 2282; D.C. Code §§ 45-301, 45-603, 45-615; U.S. Const. Amend. 5. *Bryant v. Jefferson Federal Sav. & Loan Asso.*, 509 F.2d 511, 1974 U.S. App. LEXIS 5758 (C.A.D.C. 1974).

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. 18 U.S.C. § 2282; D.C. Code §§ 45-301, 45-603, 45-615; U.S. Const. Amend. 5. *Bryant v. Jefferson Federal Sav. & Loan Asso.*, 509 F.2d 511, 1974 U.S. App. LEXIS 5758 (C.A.D.C. 1974).

Claim that homeowners were deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty to foreclose and sell property by public auction without hearing for homeowner prior to sale was so insubstantial that three-judge court would not be convened in action for injunction restraining enforcement of statutes, in view of provisions that no such foreclosure sale may take place unless holder of note secured by mortgage is given notice 30 days in advance of sale and permitting extrajudicial foreclosure only when instrument contains power of sale clause if owner defaults in payments. D.C. Code §§ 45-301, 45-603, 45-615; 18 U.S.C. § 2282; U.S. Const. Amends. 5, 14. *Young v. Ridley*, 309 F. Supp. 1308, 1970 U.S. Dist. LEXIS 12555 (D.D.C.1970).

Evicting mortgagor while she was in the process of seeking a stay of eviction did not violate due process following foreclosure under deed of trust; the mortgagor filed motion for stay one month after summary judgment in favor of mortgagee, merely stated in her brief that the eviction was premature, wrongful, and illegal, and made no showing of requirements for a stay. *Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

Fact that loan, which was used to buy house and which was secured by subsequently foreclosed mortgage, was guaranteed by Veterans Administration did not constitute sufficient governmental involvement in the foreclosure so as to make Fifth Amendment's due process clause applicable to foreclosure and sale. U.S. Const. Amend. 5; D.C. Code §§ 45-301, 45-603, 45-615. *Simpson v. Jack Spicer Real Estate, Inc.*, 396 A.2d 212, 1978 D.C. App. LEXIS 583 (1978).

In general.

Allegations, in bill seeking to set aside sale under trust deed, that trustees should have postponed sale because debtors were trying to refinance their loan, and also because times were unfavorable to sale, held insufficient to show ground for relief. *Bowen v. Mount Vernon Sav. Bank*, 85 F.2d 396, 1936 U.S. App. LEXIS 4127 (1936).

As a general proposition, trustees of deeds of trust have only those powers and duties imposed by the trust instrument itself, coupled with the applicable statute governing foreclosure sales. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Deed of trust foreclosure statute on its face does not invalidate a sale that takes place more than 30 days after the date of the notice. *Kibunja v. Alturas, L.L.C.*, 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Notice provisions of deed of trust foreclosure statute must be complied with strictly. *Kibunja v. Alturas, L.L.C.*, 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Record on appeal from preliminary injunction enjoining foreclosure sale was insufficient to permit determination as to propriety of requiring that mortgagors secure injunction by paying amount equal to monthly mortgage obligations on first and second trusts into interest bearing escrow account, requiring remand. D.C. Code 1981, § 45-715.1. *Bank-Fund Staff Fed. Credit Union v. Cuellar*, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Testimony of owner of encumbered property about cost of household items to him or his estimate of their value was sufficient to create jury issue with respect to damages incurred by owner for loss of personal property during wrongful eviction attending bank's wrongful foreclosure. D.C. Code 1981, § 45-715(b). *Independence Federal Sav. Bank v. Huntley*, 573 A.2d 787, 1990 D.C. App. LEXIS 95 (1990), writ of certiorari denied by 498 U.S. 853, 111 S. Ct. 148, 112 L. Ed. 2d 114, 1990 U.S. LEXIS 4127, 59 U.S.L.W. 3247 (1990).

Where there was no other neglect of duty or misconduct by trustees and there was pattern of default by borrower, without evidence that borrower was unaware of legal consequences of default, it would be unequitable to set aside sale of property following foreclosure under deed of trust, and thus trustees' alleged failure to disclose to borrower their conflicting interests as attorney and officers of noteholder did not constitute sufficient breach of trust to require that foreclosure sale be set aside. D.C. Code § 45-615. *Perry v. Virginia Mortg. & Inv. Co.*, 412 A.2d 1194, 1980 D.C. App. LEXIS 263 (1980).

Notice of foreclosure sale.

— In general.

Where owner of property never notified noteholder or trustee under deed of trust of owner's change of address, where owner, which was in the real estate business and knew the effect of default, was in serious default in its payments, and where owner was on notice that statutes required lender to send notice of fore-

closure to owner at last known address, failure of owner to receive notice, which was mailed in time to reach owner at its old address but which did not reach that address until owner had moved did not indicate deficiency on the part of the trustees or the noteholder in giving personal notice to the owner. D.C. Code § 45-615. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Constructive notice of foreclosure sale is the equivalent of actual notice. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Bank that purchased assignee of note secured by deed of trust was rightful note holder, and thus could properly commence non-judicial foreclosure proceedings after borrower defaulted, even though bank did not properly record assignment of note, where note was endorsed in blank and transferred to bank, and bank provided written notice and in all other ways complied with requirements for foreclosure proceedings. *Leake v. Prensky*, 798 F.Supp.2d 254, 2011 U.S. Dist. LEXIS 80307 (2011).

Under District of Columbia law, actual notice of foreclosure sale is not required if statutory requirements are adhered to. D.C. Code 1981, § 45-715(b). *Young v. 1st Am. Fin. Servs.*, 992 F. Supp. 440, 1998 U.S. Dist. LEXIS 829 (1998).

Since attorneys who handled mortgage foreclosure for mortgagee complied with District of Columbia statute governing notice of foreclosure, any foreclosure that occurred was not wrongful. D.C. Code 1981, § 45-715(b). *Young v. 1st Am. Fin. Servs.*, 992 F. Supp. 440, 1998 U.S. Dist. LEXIS 829 (1998).

Wrongful foreclosure claim is the appropriate avenue to assert violation of District of Columbia statute governing notice of foreclosure. D.C. Code 1981, § 45-715(b). *Young v. 1st Am. Fin. Servs.*, 992 F. Supp. 440, 1998 U.S. Dist. LEXIS 829 (1998).

Statute does not require actual receipt of notice of foreclosure sale by mortgagors. D.C. Code 1981, § 45-715. *In re Flowers*, 94 B.R. 3, 1988 Bankr. LEXIS 2101 (1988).

United States marshal's eviction of mortgagor after final eviction notice was mailed to wrong address was not wrongful and did not entitle the mortgagor to damages from mortgagee that allegedly was negligent in filling out address on writ of restitution; consent order of possession had been entered, the mortgagor was well aware that his continued possession of the property was in violation of the consent order, and he could not show that he suffered any injury by his failure to receive formal notice that a writ of restitution had been obtained. *Hill v. G.E. Capital Mortg. Servs.*, 859 A.2d 1055, 2004 D.C. App. LEXIS 516 (2004).

Under District of Columbia law, lender provided borrower with proper notice of foreclosure proceedings on her residence, even though borrower, who was an octogenarian, never received actual notice of foreclosure and would not have understood it if she had received it; statute only required that lender send notice to borrower's last known address by certified mail return receipt requested, and deliver a copy of notice to mayor or designated agent at least 30 days prior to foreclosure sale, both of which lender did. *Richards v. Option One Mortg. Corp.*, 403 Fed.Appx. 523, 2010 U.S. App. LEXIS 25906 (C.A.D.C. 2010).

— Length of notice, notice of foreclosure sale.

Intent of statute providing for 30-day notice to mortgagors of default was to avoid likely effect when entire loan payment becomes due upon default. D.C. Code 1981, § 45-715.1. *Bank-Fund Staff Fed. Credit Union v. Cuellar*, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Actual notice of mortgage sale received by owner of encumbered property 16 days before date of sale did not excuse bank's failure to comply strictly with notice provision of foreclosure statute, requiring that owner of encumbered property receive notice of foreclosure sale at least 30 days in advance. D.C. Code 1981, § 45-715(b). *Independence Federal Sav. Bank v. Huntley*, 573 A.2d 787, 1990 D.C. App. LEXIS 95 (1990), writ of certiorari denied by 498 U.S. 853, 111 S. Ct. 148, 112 L. Ed. 2d 114, 1990 U.S. LEXIS 4127, 59 U.S.L.W. 3247 (1990).

— Manner of notice, notice of foreclosure sale.

Neither noteholder nor trustees under deed of trust were required to give notice of foreclosure sale to owner by telephone. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Trustees under first deed of trust were not required, in addition to publishing notice of foreclosure in newspaper, to give personal notice of the foreclosure sale to the holder of the second lien, especially where second lienor had not given trustees notice that it wished to receive notice of any foreclosure sale. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Both holders of first trust and holders of second trust were given constructive notice of foreclosure sale under the first trust by virtue of publication of the customary form of advertisement of foreclosure sale in 2,000,000 copies of newspaper printed and distributed within the District of Columbia. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan*

Asso., 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Publication of newspaper advertisement of foreclosure sale satisfied statutory requirement that terms of sale and notice be given and satisfied terms of deed of trust which provided that trustees had the power, upon the request of the noteholder, to sell the realty after such previous advertisement as the trustees might deem best for the interests of all concerned. D.C. Code § 45-615(a). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Notice of foreclosure was issued by note holder's agent, as required under District of Columbia law, and, thus, loan servicer's foreclosure was not wrongful even if transfer of deed of trust from lender to loan servicer was not recorded, where agent who issued notice of foreclosure was also listed as lender's trustee on original deed of trust. *Movahedi v. U.S. Bank, N.A.*, 2012 WL 1014582 (2012).

District of Columbia statute governing notice of foreclosure was satisfied by sending notice of foreclosure sale to mortgagors' last known address by certified mail, return receipt requested, and delivering copy of notice to the mayor at least 30 days prior to scheduled sale. D.C. Code 1981, § 45-715(b). *Young v. 1st Am. Fin. Servs.*, 992 F. Supp. 440, 1998 U.S. Dist. LEXIS 829 (1998).

Mortgagee was not estopped, as a result of foreclosure sale notices that only referenced amounts due on mortgagee's refinancing and did not reference prior mortgage, from claiming that its lien on home was superior to liens of judgment creditors to the extent that was entitled to equitable subrogation for amounts it paid to prior mortgagee when it refinanced prior mortgagee's loan, as mortgagee correctly stated the amount required to cure default on its loan, and applicable statute and regulation did not require any information to be disclosed regarding the prior mortgage. *Pappas v. E. Sav. Bank, FSB*, 911 A.2d 1230, 2006 D.C. App. LEXIS 635 (2006).

Mortgagee of house properly sent notice of foreclosure sale to mortgagor at the house, rather than to hospital where mortgagor was temporarily confined as a patient; for purposes of statute, the house to which the notice was sent by certified mail constituted mortgagor's "last known address." D.C. Code § 45-615. *Rinaldi v. Wallace*, 293 A.2d 847, 1972 D.C. App. LEXIS 410 (1972).

— Persons entitled to notice, notice of foreclosure sale.

Registrar of Deeds is the agent of the Commissioner of the District of Columbia for purposes of statute requiring that notice of foreclosure sale under power of sale provision contained in deed of trust, mortgage, or other

security instrument be sent to the Commissioner or his agent. D.C. Code § 45-615. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Trustees under deed of trust were entitled to rely upon secured parties' notice of foreclosure to the owner of the property. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Statutory requirement that notice of foreclosure sale under deed of trust be given to owner did not require that both the noteholder and the trustees give notice to the owner. D.C. Code § 45-615(b). *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Judgment creditors were not entitled by statute to written notice of foreclosure sale when mortgagee foreclosed on home; statute did not require notice to be given to competing lienholders, whether superior or subordinate. *Pappas v. E. Sav. Bank, FSB*, 911 A.2d 1230, 2006 D.C. App. LEXIS 635 (2006).

Notice given to deed of trust settlers for first foreclosure sale carried over for purposes of second sale, and thus 30 days' notice of second sale was not required, where trustee was aware of settlers' bankruptcy filing, but went ahead with sale anyway after announcing that sale would be contingent upon later ratification by bankruptcy court, and bankruptcy court declared first sale void; holding first sale on contingent basis was more akin to a postponement than a cancellation, and any reasonable person would have understood that a second sale was sure to follow if the first sale was not approved or ratified by bankruptcy court. *Kibunja v. Alturas, L.L.C.*, 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Parties.

Heirs of estate who had obtained judgments against homeowner as a result of homeowner's breach of fiduciary duties when homeowner was serving as personal representative of estate did not have standing to challenge the inadequate timing of notice of foreclosure sale to homeowner, in their creditor's bill suit asking that mortgage foreclosure be set aside, absent any injury to themselves as a result of the failure to properly notify homeowner, or any interest within the zone of interests protected by the notice statute. *Pappas v. E. Sav. Bank, FSB*, 911 A.2d 1230, 2006 D.C. App. LEXIS 635 (2006).

Remand was required for trial court to consider and decide whether purchaser at foreclosure sale was bona fide purchaser and was indispensable party to mortgagor's suit against mortgagee asking that foreclosure sale be set aside as "wrongful" and seeking compensatory

and punitive damages and whether principal of purchaser whose home served in part as collateral for purchase money loan to foreclosure sale purchaser had or might have any interest in property and should be joined. Civil Rule 19(a). *Capital City Corp. v. Johnson*, 646 A.2d 325, 1994 D.C. App. LEXIS 129 (1994), remanded by 723 A.2d 852, 1999 D.C. App. LEXIS 5 (D.C. 1999).

On remand for determination of whether purchaser at foreclosure sale was an indispensable party in mortgagor's suit against mortgagee asking that foreclosure sale be set aside as "wrongful," court was required to consider whether joinder would help to avoid multiple suits concerning same property, and whether joinder would further public interest in complete, consistent, efficient settlement of controversies, and public stake in settling disputes by wholes, whenever possible. Civil Rule 19(a). *Capital City Corp. v. Johnson*, 646 A.2d 325, 1994 D.C. App. LEXIS 129 (1994), remanded by 723 A.2d 852, 1999 D.C. App. LEXIS 5 (D.C. 1999).

Pleadings.

Mortgagor stated plausible claim under District of Columbia law against mortgagee, mortgage servicer, and others for wrongful foreclosure based on failure to provide accurate cure amount, although he did not reference actual notice of foreclosure, but, rather, referred to two other documents with no bearing on the matter, where he alleged that defendants represented in bankruptcy court that the arrearage was \$13,952.35, but that they failed to credit two payments he made, and that they later provided a past due amount that had ballooned to \$27,633.90. *Diaby v. Bierman*, 795 F.Supp.2d 108, 2011 U.S. Dist. LEXIS 73374 (2011).

Mortgagor failed to state plausible claims against mortgagee, mortgage servicer, and others to quiet title and for lack of standing to foreclose on his property, although he alleged that the note he signed had been sold, but there was no record of that sale in the land records, and none of the defendants were current note holder of record, where mortgage or deed of trust was required to be recorded, not the underlying note, deed of trust included a power of sale clause allowing non-judicial foreclosures, and, in his complaint, mortgagor repeatedly referred to "defendant" in the singular form without specifying to which defendant he referred. *Diaby v. Bierman*, 795 F.Supp.2d 108, 2011 U.S. Dist. LEXIS 73374 (2011).

Allegations of home mortgagors, that substitute foreclosure trustees prematurely instituted foreclosure proceedings for deed of trust, listed an incorrect cure amount, and refused to correct the cure amount and postpone the foreclosure sale, without any allegations that the trustees took some action that violated a duty

conferred on the trustees by the trust instrument or the foreclosure statute, or that the trustees engaged in fraud, misrepresentation, self-dealing, or over-reaching, failed to state a claim for breach of fiduciary duty. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Powers and duties of trustees.

Where one of two trustees died and surviving trustee refused to act, trustee appointed as substitute in place of surviving trustee only, held authorized to sell property without there being substitution of another trustee for deceased trustee. D.C. Code 1929, T. 25, §§ 193, 194, 201, 204, 209. *Stokes v. Hinden*, 85 F.2d 200, 1936 U.S. App. LEXIS 4073 (1936).

Any power a trustee may have must originate in the deed of trust itself or in any applicable statutes. *Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

Trustees were not required by deed of trust or any statute to be present during the foreclosure sale. *Thornton v. Norwest Bank of Minn.*, 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

As a general proposition, trustees of deeds have only those powers and duties imposed by trust instrument itself, coupled with those imposed by applicable statute governing foreclosure sales. D.C. Code § 45-615. *Perry v. Virginia Mortg. & Inv. Co.*, 412 A.2d 1194, 1980 D.C. App. LEXIS 263 (1980).

Where borrower did not allege that trustees under deed of trust failed to carry out their affirmative duties under deed of trust and statute, upon borrower's default, to advertise and sell property and pay all property expenses and indebtedness, trustees were not alleged to be guilty of fraud, misrepresentation, self-dealing or other overreaching, and borrower did not allege that purchaser paid sum so shockingly low as to require invalidation of sale, no basis existed for imposing on trustees by judicial fiat any general fiduciary duties beyond those otherwise required by law for protection of borrower. D.C. Code § 45-615; National Housing Act, § 221(d)(2) as amended 12 U.S.C. § 1715l(d)(2). *Perry v. Virginia Mortg. & Inv. Co.*, 412 A.2d 1194, 1980 D.C. App. LEXIS 263 (1980).

Right to cure.

Foreclosure notice that erroneously stated that mortgagors did not have right to cure, and which did not include amount necessary to cure as required by recorder of deeds' standard form, was defective as a matter of law even though mortgagors had actual notice of amount needed to cure. D.C. Code 1981, § 45-715.1. *Bank-Fund Staff Fed. Credit Union v. Cuellar*, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Inclusion of amount to cure in foreclosure notice is consistent with strict construction of foreclosure statutes in favor of homeowners. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Fact that mortgagors lacked sufficient funds to reinstate was not ground for denying reinstatement where foreclosure notice failed to inform mortgagors of right to cure, leaving mortgagors to believe only way to save home was to pay full amount of mortgage; moreover, mortgagors had at least 25 days in which to raise cure amount. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Summary judgment.

Court of Appeals could not consider expert affidavit filed by deed of trust settlors, with motion for reconsideration, four months after summary judgment was granted to purchaser at foreclosure sale, where trial court did not consider affidavit; Court of Appeals could only consider facts that were before trial court at time it ruled. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Deed of trust settlors who merely rested on allegations in pleadings that dispute existed as to how amount owed under promissory note was calculated failed to raise a genuine issue of fact, as required to oppose summary judgment,

where settlors offered no actual evidence, through an affidavit or otherwise, that inaccurate methods were in fact used, and trustee's calculations did not reflect any inconsistencies or conflict with anything else in its pleadings. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Deed of trust settlors who did not file affidavit in opposition to summary judgment did not preserve contention that summary judgment should be delayed pending discovery, where settlors' opposition to summary judgment in no way articulated what steps they had taken to discover necessary information or spell out how they planned to obtain that information, and, through fault of no one but settlors, discovery requests were not even made until very day summary judgment motion was granted. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Deed of trust settlors had adequate opportunity, before summary judgment was granted in favor of purchaser at foreclosure sale, to obtain discovery on how amount owed under promissory note was calculated, where settlors made no attempt to obtain discovery until nearly nine months after purchaser's complaint was filed and nearly three months after settlors filed their opposition to summary judgment motion. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

§ 42-815.01. Right to cure residential mortgage foreclosure default.

(a) For the purposes of this act, the term "residential mortgage" means a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single-family dwellings, including condominium or cooperative units, at least one of which is the principal place of abode of the debtor or his immediate family.

(b) Notwithstanding the provisions of any other law, after a notice of intention to foreclose a residential mortgage has been given pursuant to § 42-815, at any time up to 5 business days prior to the commencement of bidding at a trustee sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or anyone in his behalf, not more than 1 time in any 2 consecutive calendar years, may cure his default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (c) of this section.

(c) To cure a default under this section, a residential mortgage debtor shall:

(1) Pay or tender in the form of cash, cashier's check, or certified check all sums, including any reasonable late penalty, required to bring the account current, with the exception of any amounts due by operation of any acceleration clause that may be included in the security agreement;

(2) Perform any other obligation which he would have been bound to

perform in the absence of default or in the absence of the exercise of an acceleration clause, if any; and

(3) Pay or tender any expenses properly associated with the foreclosure and incurred by the mortgagee to the date of debtor's payment or tender under this section. These costs and expenses may include, but not be limited to, advertising fees, trustee fees, and reasonable attorney's fees.

(d) Cure of a default pursuant to this section restores the residential mortgage debtor to the same position as if the default or the acceleration had not occurred.

(March 3, 1901, 31 Stat. 1274, ch. 854, § 539a, as added May 8, 1984, D.C. Law 5-82, § 2, 31 DCR 1348; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Mar. 12, 2011, D.C. Law 18-314, § 2(b), 57 DCR 12404.)

Prior Codifications. — 1981 Ed., § 45-715.1.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 18-314 rewrote subsec. (a), which had read as follows: "(a) For the purposes of this act, the term 'residential mortgage' means a loan used to acquire or refinance property which is a single family dwelling, including a condominium or cooperative unit, which is the principal place of abode of the debtor or the debtor and his immediate family."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Section 2(a) of D.C. Law 19-41, in subsec. (a), deleted ", at least one of which is the principal place of abode of the debtor or his immediate family".

Section 4(b) of D.C. Law 19-41 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1,

Legislative history of Law 5-82. — Law 5-82, the "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984," was introduced in Council and assigned Bill No. 5-187, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 14, 1984, and February 28, 1984, respectively. Signed by the Mayor on March 15, 1984, it was assigned Act No. 5-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

Legislative history of Law 18-314. — For history of Law 18-314, see notes under § 42-815.

References in text. — This act, referred to in subsection (a), is the Act of March 3, 1901, Chapter 854.

CASE NOTES

ANALYSIS

Construction and application.
Expenses.
Notice of right to cure.
Residential status of property.

Construction and application.

Inclusion of amount to cure in foreclosure notice is consistent with strict construction of foreclosure statutes in favor of homeowners.

D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Mortgagors' failure to meet terms of agreement with mortgagee after receiving notice of default did not justify depriving mortgagors of statutory remedy of reinstatement; inducement for mortgagors' agreement to pay entire amount of outstanding loan within 30 days was based on erroneous assertion by mortgagee

that remedy of cure was no longer available. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

In order to fulfill purposes of right-to-cure statute, cure figure can only encompass debt that is secured by property. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Trustee's sale was not void even though the debtor was not notified that he could cure his default and was not provided with a minimum amount required to reinstate his loan when the remedy of preventing foreclosure by tendering cure was not available at the time of the sale. O'Malley v. Chevy Chase Bank, 125 WLR 1041 (Super. Ct. 1997).

If the debtor has prevented a foreclosure after the trustee has scheduled and advertised a sale, by tendering the cure amount, that remedy is unavailable to the debtor who again finds himself in default and facing a loss of his property through a trustee sale within a two-year period of the cure. O'Malley v. Chevy Chase Bank, 125 WLR 1041 (Super. Ct. 1997).

Expenses.

District of Columbia foreclosure statute requiring that mortgagor be given opportunity to cure the default once a notice of foreclosure was issued did not require loan servicer to specify amount of attorney fees, foreclosure costs, and all other charges and accruals owed in addition to deficiency in the loan payments in its notice of foreclosure; amount of such expenses depended on point in time mortgagor brought the account current, and the notice stated amount mortgagor was required to pay to bring the mortgage current, and noted that mortgagor would also have to pay reasonable attorney fees and expenses. Movahedi v. U.S. Bank, N.A., 2012 WL 1014582 (2012).

Notice of right to cure.

Mortgage lender provided borrower with payoff amount necessary to cure her mortgage default, and thus, lender's foreclosure of borrower's mortgage was not violative of District of Columbia Right to Cure Residential Mortgage Default Act; lender sent payoff statement to designated settlement agent for lender through which borrower was negotiating a reverse mortgage loan, records of reverse mortgage lender showed it received updated payoff information and verified payoff amount, no additional payoff information would have been re-

quired for reverse mortgage lender to close on loan, but reverse mortgage lender and borrower never closed on loan, as it was canceled because borrower's phone number was disconnected and lender could not contact borrower to set up closing to avoid foreclosure, and thus, borrower would not have had money available to tender to original mortgage lender in order to cure default. Richards v. Option One Mortg. Corp., 682 F.Supp.2d 40, 2010 U.S. Dist. LEXIS 9573 (2010), affirmed by 403 Fed. Appx. 523, 2010 U.S. App. LEXIS 25906 (D.C. Cir. 2010).

Foreclosure notice that erroneously stated that mortgagors did not have right to cure, and which did not include amount necessary to cure as required by recorder of deeds' standard form, was defective as a matter of law even though mortgagors had actual notice of amount needed to cure. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Fact that mortgagors lacked sufficient funds to reinstate was not ground for denying reinstatement where foreclosure notice failed to inform mortgagors of right to cure, leaving mortgagors to believe only way to save home was to pay full amount of mortgage; moreover, mortgagors had at least 25 days in which to raise cure amount. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Residential status of property.

Mortgagors' action in allowing nonfamily member to live in home while they were out of the country and in renting home to nonfamily member did not operate to terminate mortgage's "residential" status for purposes of statutory right to cure; the house remained mortgagors' "principal place of abode" within meaning of statute. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Statute providing for right to cure residential mortgage is intended to be generally available remedy for defaults on residential mortgages. D.C. Code 1981, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

Availability of right-to-cure remedy for holders of residential mortgages is not to be denied to homeowners who temporarily leave their homes for employment reasons. D.C. Code, § 45-715.1. Bank-Fund Staff Fed. Credit Union v. Cuellar, 639 A.2d 561, 1994 D.C. App. LEXIS 47 (1994).

§ 42-815.02. Foreclosure mediation.

(a) For the purposes of this section, the term:

(1) "Borrower" means a residential mortgage borrower and, if different from the residential mortgage borrower, the person who holds record title.

(2) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) "Lender" means a residential mortgage lender. The term "lender" shall include a trustee.

(4) "Loss mitigation analysis" means an analysis, performed by the lender, of a borrower's financial condition, using information in the borrower's loss mitigation application and any other information available to the lender, to evaluate and recommend options in lieu of foreclosure available to borrower from the lender.

(5) "Mediation" means a meeting between lender or trustee and the borrower, with the help of a neutral third-party mediator appointed by the Mediation Administrator, to attempt to reach agreement on a loss mitigation program for the borrower, including the renegotiation of the terms of a borrower's residential mortgage, loan modification, refinancing, short sale, deed in lieu of foreclosure, and any other options that may be available in lieu of foreclosure.

(6) "Mediation Administrator" means an individual designated by the Commissioner to administer mediation services under this section.

(7) "Mediation certificate" means a document issued by the Commissioner to a lender evidencing compliance with the mediation requirements of this act.

(8) "Mediation election form" means a form, prescribed by the Commissioner, upon which the borrower may elect to participate in mediation and certify compliance with the lender's loss mitigation documentation requirements.

(9) "Mediation report" means a summary of the mediation provided by the mediator to the Mediation Administrator on a form prescribed by the Commissioner.

(10) "Mortgage" means a lien instrument, including a mortgage or deed of trust, with at least 2 parties, in which the borrower grants a lien on residential real property to the lender as security for the repayment of a note or loan.

(11) "Notice of default on residential mortgage" means a notice given pursuant to § 42-815(b)(1), in the form that the Mayor shall, by rule, prescribe, which shall contain:

(A) The name and telephone number of the lender;

(B) The following loan information:

(i) The amount of the principal balance and outstanding interest owed;

(ii) All past due payments;

(iii) Penalties; and

(iv) The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees; and

(C) Any other information that the Mayor shall, by rule, prescribe.

(12) "Notice of intention to foreclose a residential mortgage" means a notice given pursuant to § 42-815(c).

(13) "Power of sale" means the right of a lender to sell residential real

property after an uncured default at a public auction as provided in this act to repay the note or other obligation secured by a deed of trust or mortgage.

(14) "Residential mortgage" shall have the same meaning as in § 42-815.01(a).

(15) "Settlement agreement" means the form, prescribed by the Mediation Administrator, upon which the terms and conditions of an agreement made pursuant to the mediation are set forth.

(16) "Trustee" means the person holding a lien on real property pursuant to a residential mortgage or the assignee for foreclosure of the residential mortgage.

(b) Notwithstanding the provisions of any other law, after a notice of default of a residential mortgage has been given pursuant to § 42-815(b)(1), the lender shall engage in mediation if the borrower elects under subsection (c) of this section. Prior to the foreclosure of any residential mortgage or deed of trust, a lender shall:

(1) Include with the notice of default on a residential mortgage which is mailed to the borrower pursuant to § 42-815(b)(1):

(A) Contact information which the borrower may use to reach an agent or representative of the lender with authority to explain the mediation process;

(B) A statement recommending that the borrower seek housing counseling services;

(C) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(D)(i) A description of all loss mitigation programs available from the lender and applicable to the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) A description of the eligibility requirements for the loss mitigation programs applicable to the residential mortgage subject to the notice of default of a residential mortgage for these programs;

(E)(i) An application in the form that the Mayor, by rule, shall prescribe, for the loss mitigation programs available in connection with the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) Instructions for completing and mailing the loss mitigation application, with one envelope addressed to the lender; and

(F) A mediation election form, in a form prescribed by the Mediation Administrator, with one envelope addressed to the lender, and one envelope addressed to the Mediation Administrator; and

(2) Provide a copy of the notice of default on a residential mortgage to the Mediation Administrator in accordance with the rules issued pursuant to subsection (i) of this section.

(c)(1) No later than 7 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail the following to the borrower:

(A) A statement that the borrower is subject to foreclosure and must take immediate action to avoid foreclosure;

(B) A statement that the borrower is eligible to participate in foreclosure mediation;

(C) The contact information for the Mediation Administrator and a statement instructing that the borrower should immediately contact the Mediation Administrator to obtain additional information;

(D) A statement recommending that the borrower seek housing counseling services;

(E) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(F) A statement recommending that the borrower review the mediation election form and the loss mitigation application provided by the lender;

(G) A request for the borrower immediately to contact the Mediation Administrator and the lender if the borrower has not received a loss mitigation application and mediation election form from the lender;

(H) A request for the borrower to return the mediation election form to the Mediation Administrator and the lender, in the envelopes provided, no later than 30 days from the date of the mailing of the form required by subsection (b) of this section;

(I) A request for the borrower to return the loss mitigation application to the lender, in the envelope provided, no later than 30 days after the date of the mailing of the form required by subsection (b) of this section;

(J) A statement that the borrower will lose the right [to] participate in mediation if the mediation election form and the loss mitigation application are not returned within the stipulated 30-day time period;

(K) A statement that the borrower has to pay a \$50 fee payable to the District to participate in mediation; and

(L) A statement that mediation will be held 45 days after the date of the mailing of the form required by subsection (b) of this section.

(2) No later than 20 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail to the borrower:

(A) The information specified in paragraph (1) of this subsection;

(B) A statement that the mailing is a 2nd notice and that the borrower must take immediate action to avoid foreclosure.

(d)(1) To participate in mediation, no later than 30 days after the mailing of the notice of default on a residential mortgage and information required by subsection (b) of this section, a borrower shall return the mediation election form and a \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender. A borrower shall forfeit the right to mediation if the borrower does not return the mediation election form and the \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender, within 30 days after the mailing of the notice of default on a residential mortgage.

(2) For each borrower electing to participate in mediation, the Mediation Administrator shall schedule a mediation session to commence no later than 45 days after the mailing of the notice of default on a residential mortgage.

(3) If the borrower elects to waive mediation by not paying the \$50 fee or by not returning the mediation election form or the loss mitigation application within 30 days after the mailing of the notice of default on a residential mortgage, the Mediation Administrator shall issue a mediation certificate to the lender no earlier than 45 days, but no later than 60 days, after the mailing of the form required by subsection (b) of this section. The power of sale under a mortgage shall not be exercised until the Mediation Administrator has issued a mediation certificate.

(e)(1) Each mediation required by this section shall be conducted by a mediator appointed in accordance with rules issued pursuant to subsection (i) of this section. The lender, or a representative, and the borrower, or a representative, shall attend the mediation. The lender, or its representative, shall bring to the mediation the results of its loss mitigation analysis, a true copy of the mortgage, including the mortgage note or agreement, every assignment of the mortgage, evidence proving that the lender has standing to commence foreclosure against the borrower, and any other information required pursuant to the rules issued under subsection (i) of this section. If a representative of the lender, or the borrower, attends the mediation, the representative shall:

(A) Have authority to:

(i) Address loss mitigation programs that may be available to the borrower;

(ii) Renegotiate the terms of the residential mortgage, including a loan modification; and

(iii) Negotiate any other options that may be available in lieu of foreclosure; or

(B) Have access at all times during the mediation to a person with such authority.

(2)(A) The lender shall be subject to civil penalties payable to the District as follows:

(i) If the lender, or a representative, fails to attend the mediation, a penalty of \$500 shall be imposed;

(ii) If the lender, or a representative, fails to bring to the mediation each document required by this subsection, a penalty of \$500 shall be imposed; or

(iii) If the lender, or a representative, fails to participate in the mediation in good faith, a penalty of \$500 shall be imposed.

(B) Penalties shall be enforceable by an action in the Superior Court of the District of Columbia.

(C) If the borrower fails to attend a scheduled mediation session without good cause shown, no later than 10 days after the scheduled mediation session missed by the borrower, the Mediation Administrator shall issue a mediation certificate to the lender.

(3) If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification or to any other options in lieu of foreclosure, no later than 5 days after the mediation session at which the parties were not able to reach an agreement, the mediator shall prepare and

submit to the Mediation Administrator, on a form prescribed by the Commissioner, a recommendation that the matter be terminated. After reviewing and considering the mediator's report and any recommendations therein, no later than 5 days after receiving the mediator's report, the Mediation Administrator may issue a mediation certificate to the lender or refer the matter to another mediator.

(4) If the parties enter a settlement agreement:

(A)(i) If the lender breaches the terms of the settlement agreement entered into during mediation, the lender shall pay a penalty of \$ 1,000 and shall be required to perform the terms of a settlement agreement.

(ii) This penalty shall be enforceable by an action in the Superior Court of the District of Columbia.

(B)(i) If the borrower breaches the terms of the settlement agreement entered into during mediation, the lender shall apply to the Mediation Administrator for a mediation certificate.

(ii) Upon receipt of the lender's application for a mediation certificate due to the borrower breaching the terms of the settlement agreement, no later than 10 days after the receipt of the application, the Mediation Administrator may issue a mediation certificate to the lender, the issuance of which shall not be unreasonably withheld.

(5) Mediation shall be concluded within 90 days of the mailing of the form required by subsection (b) of this section, unless extended for an additional 30 days by the mutual consent of both parties.

(f) The lender shall pay a fee of \$300 for each notice of default on a residential mortgage issued. If the power of sale for a property is exercised, the lender may recover the \$300 fee from the proceeds of sale if there is any amount remaining after the payment of all amounts due and owing by the borrower on the residential mortgage and the costs of the sale. The lender shall not be permitted to recover mediation fee paid if there is a deficiency upon the sale of the foreclosed property.

(g) The Mediation Administrator and each mediator who acts in good faith and without gross negligence pursuant to this section shall be immune from civil liability for those acts.

(h) Each foreclosure sale in violation of this act shall be void.

(i) Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.], or any successor act, shall not apply to any contract that the Mediation Administrator may enter into with mediators for the performance of mediation services.

(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title [§ 2-501 et seq.], shall issue rules to implement the provisions of this section. The rules shall include provisions:

(1) Ensuring that mediations occur in an orderly and timely manner;

(2) Requiring each party to a mediation to provide such information as the Mediation Administrator determines to be necessary;

(3) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith; and

(4) Establishing procedures relating to the appointment of each mediator, the training and qualification requirements for each mediator, and the compensation to be paid to each person serving as a mediator.

(k) The participation in mediation shall not waive any other legal claims that the lender or borrower may have against each other.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539b, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404.)

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-41 designated the second subsec. (e) as subsec. (f); redesignated subssecs. (f) to (i) as subssecs. (g) to (j); repealed the newly designated subsec. (h); and added subssecs. (h-1) to (h-4) to read as follows:

“(h-1) A foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate.

“(h-2) A borrower shall have the same rights to assert claims for a defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage.

“(h-3) Except as provided for in subsections (h-1) and (h-2) of this section, a mediation certificate shall serve as conclusive evidence that all other provisions of the act and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser’s lender or assigns.

“(h-4) Nothing in this act shall be construed to limit a borrower’s right to assert a claim for fraud or monetary damages against the borrower’s lender.”

Section 4(b) of D.C. Law 19-41 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2011 (D.C. Act 19-147, August 9, 2011, 58 DCR 6828).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2012 (D.C. Act 19-378, June 15, 2012, 59 DCR 7380).

Legislative history of Law 18-314. — For history of Law 18-314, see notes under § 42-815.

References in text. — This act, referred to in subssecs. (a)(7) and (h), is the Act of March 3, 1901, Chapter 854.

§ 42-815.03. Establishment of Foreclosure Mediation Fund.

(a) There is established as a nonlapsing fund the Foreclosure Mediation Fund (“Fund”), which shall be used solely to pay the costs of the administration of the foreclosure mediation established by § 42-815.02. The Mayor shall deposit in the Fund all fees and penalties generated pursuant to the foreclosure mediation program.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General [Fund] of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section, subject to authorization by Congress.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539c, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

For temporary (90 day) amendment of section, see § 2(c) of Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2012 (D.C. Act 19-378, June 15, 2012, 59 DCR 7380).

Legislative history of Law 18-314. — For history of Law 18-314, see notes under § 42-815.

§ 42-816. Sale of property — Deficiency judgments; limitations thereon; relief in suit to enforce vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale; provided, that the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due.

(Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-716. 1973 Ed., § 45-616.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Deficiency.
In general.
Limitation of actions.

Power and authority of trustee.

Deficiency.

Where purchaser at foreclosure sale paid approximately \$8,400 for the property, pur-

chaser made improvements totaling approximately \$8,800, and purchaser resold the property for approximately \$19,600, any deficiency in the price at the foreclosure sale was not so shocking as to require the sale to be set aside. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Sole action on a note secured by mortgage after foreclosure is an action for difference between what was realized at the sale and what is owed on the debt, and it is immaterial that both note and deed of trust are executed, and a creditor can have but one satisfaction, and after a foreclosure sale the proceeds must be applied to payment of the debt leaving the note actionable for the deficiency only. D.C. Code 1951, §§ 45-616, 45-617. *Finley v. Friedman*, 159 A.2d 668, 1960 D.C. App. LEXIS 184 (Cr.App. 1960).

The statutes indicate that a deficiency judgment after mortgage foreclosure may properly be rendered by court at a judicial foreclosure, that after a sale pursuant to a power contained in a deed of trust, the purchasing creditor need pay to the trustee only the excess of purchase money over what is owed him, and it would be inconsistent with the statute to hold, that if the sale brings less than the amount of the debt, a purchasing creditor need not apply the amount realized to the debt before he can maintain an action on the debtor's personal obligation. D.C. Code 1951, §§ 45-616, 45-617. *Finley v. Friedman*, 159 A.2d 668, 1960 D.C. App. LEXIS 184 (Cr.App. 1960).

In general.

Person conducting foreclosure sale is not required to make any effort to procure the attendance of bidders. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Proceedings to foreclose on property by advertisement are the equivalent of an action to foreclosure on a note and sufficient to inform owner that the holder of the note has exercised its option to accelerate the payment of the principal. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Commencement of an action for the principal sum of a note is sufficient in itself to show that holder has exercised its option to accelerate the payments of the principal. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

Where deed of trust authorized trustees to use the proceeds of foreclosure sale to pay the remaining unpaid balance of the principal of note given for purchase of the property whether or not the entire balance was due and where notice of foreclosure sale sent to owner indicated that property would be sold to satisfy the

debt secured by the deed of trust and also informed owner as to what the balance due was, proceeds of sale were properly applied to pay the entire amount of the note, even though payments on the note were only three months delinquent. *S & G Invest., Inc. v. Home Federal Sav. & Loan Asso.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

That deed of trust acknowledged existence of indebtedness on notes was insufficient to constitute an independent undertaking for purposes of rendering a personal judgment as distinguished from one for foreclosure. *Hoffman v. Sheahin*, 121 F.2d 861, 1941 U.S. App. LEXIS 3344 (1941).

A foreclosure sale cannot be set aside for inadequacy of price alone, unless the inadequacy is such as to shock the conscience and of itself suggest fraud or misconduct. *Orlove v. National Sav. & Trust Co.*, 98 F.2d 259, 1938 U.S. App. LEXIS 3200 (1938).

Where realty subject to first and second deeds of trust was ultimately conveyed to corporation for which receiver was subsequently appointed, and trustee under first deed of trust applied for and obtained leave of court in receivership proceeding to sell property under deed of trust and deliver possession to purchaser, sale made pursuant to authority granted held sale under trust deed, and not judicial sale under order of court which would be invalid as to holder of second deed of trust because of absence of notice of sale other than that required by first deed of trust, D.C. Code 1929, T. 25, § 206, and § 191 et seq.; Rules of Supreme Court of District of Columbia, Equity Rules 68 et seq. *Huffines v. American Security & Trust Co.*, 71 F.2d 345, 1934 U.S. App. LEXIS 3082 (1934).

Where receiver was appointed for insurance corporation and all persons were restrained from interfering with possession and administration of property by receiver, creditor holding lien on any of property of corporation coming into possession of receiver could not obtain sale of property in satisfaction of lien except by permission of court which appointed receiver. *Huffines v. American Security & Trust Co.*, 71 F.2d 345, 1934 U.S. App. LEXIS 3082 (1934).

Failure of trial court to address possible liability of bank arising from foreclosure actions taken subsequent to initial foreclosure which bank cancelled in order to foreclose afresh, on theory that initial foreclosure sale reduced or extinguished purchaser's debt by amount bid warranted remand for consideration of liability or other appropriate action. *Walker v. Independence Federal Sav. & Loan Asso.*, 555 A.2d 1019, 1989 D.C. App. LEXIS 46 (1989).

Proof of precise terms of bank's oral agreement to refrain from foreclosure of condominium purchase loan was insufficient to support

jury finding of breach of such agreement. *Walker v. Independence Federal Sav. & Loan Assn.*, 555 A.2d 1019, 1989 D.C. App. LEXIS 46 (1989).

Limitation of actions.

That an action for deficiency on deed of trust notes cannot be instituted until after amount is ascertained and therefore until after sale and application of proceeds of foreclosure sale means, except with respect to items for payment of which deed itself creates personal liability, only that applying proceeds reduces amount due on original promise and not that it creates a new and independent one for the purposes of limitations statute. *Hoffman v. Sheahin*, 121 F.2d 861, 1941 U.S. App. LEXIS 3344 (1941).

An action for a deficiency on deed of trust notes filed more than three years after maturity, but less than three years after date of foreclosure and application of proceeds, was barred by three-year statute, as against contention that statutory term began on date of foreclosure and application of proceeds on theory that trustee, who was authorized on default to sell property and apply proceeds to pay notes after paying expenses of sale, taxes, etc., was defendant's "agent" to make the application and his doing so constituted a "payment" which revived the cause and started the running of the statute from the time it was made. D.C. Code 1929, T. 25, § 206. *Hoffman v. Sheahin*, 121 F.2d 861, 1941 U.S. App. LEXIS 3344 (1941).

An action for deficiency on deed of trust notes filed more than three years after maturity, but less than three years after date of foreclosure and application of proceeds, was barred by

three-year statute, as against contention that statutory term began on date of foreclosure and application of proceeds on theory that action was for deficiency which could not accrue until after sale and determination of amount and was not on notes themselves, where proceeds were applied to payment of taxes and expenses of foreclosure in priority to payment of principal and interest as required by deed and were more than sufficient to satisfy those items, deed contained no covenant to pay debt, and plaintiff could have sued on notes without resorting to security at any time within three years from maturity. *Hoffman v. Sheahin*, 121 F.2d 861, 1941 U.S. App. LEXIS 3344 (1941).

The statute authorizing the entry of deficiency judgments on deed of trust notes, limited in terms to applications for such relief in judicial proceedings for foreclosure, was intended to empower the court to combine in a single action relief by way of foreclosure and personal judgment, and it does not extend the time for bringing an independent action to enforce personal liability after foreclosure by nonjudicial sale. D.C. Code 1929, T. 25, § 206. *Hoffman v. Sheahin*, 121 F.2d 861, 1941 U.S. App. LEXIS 3344 (1941).

Power and authority of trustee.

Trustee under deed of trust with conventional provisions is basically a trustee of a power to convey title under certain circumstances, such as after a forced sale or payment, and, while his powers and duties must be exercised with religious fidelity to ethical principles, his management responsibilities fall short of those conferred on trustees generally. *S & G Invest., Inc. v. Home Federal Sav. & Loan Assn.*, 505 F.2d 370, 1974 U.S. App. LEXIS 6650 (C.A.D.C. 1974).

§ 42-817. Sale of property — Amount creditor to pay if purchaser.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-717. 1973 Ed., § 45-617.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001.

This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not

apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

ANALYSIS

Construction and application.

Credit for bid.

In general.

Value of security.

Vendor's lien.

Construction and application.

The statutes indicate that a deficiency judgment after mortgage foreclosure may properly be rendered by court at a judicial foreclosure, that after a sale pursuant to a power contained in a deed of trust, the purchasing creditor need pay to the trustee only the excess of purchase money over what is owed him, and it would be inconsistent with the statute to hold, that if the sale brings less than the amount of the debt, a purchasing creditor need not apply the amount realized to the debt before he can maintain an action on the debtor's personal obligation. D.C. Code 1951, §§ 45-616, 45-617. *Finley v. Friedman*, 159 A.2d 668, 1960 D.C. App. LEXIS 184 (Cr.App. 1960).

Credit for bid.

When creditor becomes purchaser at sale of property held under deed of trust, he is entitled to credit amount of purchase price to debt, and that credit constitutes a money payment to use and benefit of debtor. D.C. Code 1929, T. 25, § 207. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

In general.

The cestui que trust may properly become purchaser at sale of property held under a deed of trust. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

Where owner of note secured by deed of trust had paid purchase price bid made in name of his wife on sale by trustees of property covered by deed of trust, and deed was executed conveying property to wife, note owner was not entitled to equitable relief on theory of a resulting trust, in absence of any evidence that he intended trust to arise in his favor from transaction. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

Trial court's analysis of whether unpaid water and sewer bill could be deducted from foreclosure sale proceeds was insufficient to permit meaningful appellate review, and remand was required, where trial court did not address the interplay between the statute governing the amount a creditor who is also the purchaser at a sale under a deed of trust is required to pay to the trustee, the deed of trust, the foreclosure agreement, and the statute allowing the District of Columbia to obtain a lien for water charges. D.C. Code 1981, §§ 43-1529, 45-717. *Concord Enters. v. Binder*, 710 A.2d 219, 1998 D.C. App. LEXIS 87 (1998).

Value of security.

In suit by trustee for deficiency due on secured notes following sale of security under trust deed on bid made on behalf of noteholder, evidence did not establish defense, if any, that security was worth amount due on notes. D.C. Code 1929, T. 25, § 207. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

In suit by trustee for deficiency due on secured notes following sale of security under trust deed on bid made on behalf of noteholder, proof that security was worth \$17,500, the amount due on the notes, whereas accepted bid was for only \$12,500, would not establish defense. D.C. Code 1929, T. 25, § 207. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

Vendor's lien.

Where trustees, who at instance of owner of note secured by deed of trust sold property covered thereby, were not entitled to a vendor's lien because purchase price bid made in name of his wife had been paid by note owner, no vendor's lien could be established in favor of note owner who had had neither legal nor equitable title to property, and who presented no evidence upon which claim could be founded that he was subrogated to rights of trustees, even if a vendor's lien had existed. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

The owner of note secured by deed of trust on property, by directing trustees to sell property

and to indorse on back of note a credit for amount of bid made in name of note owner's wife, thereby paid for property, as respects trustee's right to a vendor's lien, notwithstanding that motive for making indorsement was note owner's desire to sue on note in another jurisdiction for balance due thereon. D.C. Code 1929, T. 25, § 207. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

Where owner of note secured by deed of trust on property paid purchase price on sale by trustees of property which was bid in in name of his wife, no vendor's lien existed which could be enforced by trustees, notwithstanding that wife's brother bid in property in her name, in absence of any showing of agency relationship between them. *Kosters v. Hoover*, 98 F.2d 595, 1938 U.S. App. LEXIS 3278 (1938).

§ 42-818. Commission to mortgagee or trustee; rates; when advertised sale not held.

(a) Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of 5% on the first \$500 and 3% on the balance of the purchase money actually paid by the purchaser at any sale, and ½% on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

(b) When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of 1% on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor; provided, that if a sale shall actually take place under any such advertisement, he shall not be entitled to more than 1 such allowance in addition to his commission on the proceeds of an actual sale.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-718. 1973 Ed., § 45-618.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lend-

ing and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

CASE NOTES

In general.

In action to foreclose a trust deed, it was for the District Court to allocate compensation and expenses of receiver who was appointed on

defendant's motion, in accordance with justice, unburdened by any fixed rule. *Camp v. Canelacos*, 131 F.2d 236, 1942 U.S. App. LEXIS 2780 (1942).

§ 42-818.01. Tracking addresses.

Every deed of trust or substitution of trustee offered for recordation shall have the name and address of each party to the deed of trust or substitution of trustee typed or printed directly above or below the signature of the party. Deeds of trust or substitution of trustee submitted without both the name and address of each person will not be recorded.

(March 3, 1901, 31 Stat. 1271, § 545a, as added Apr. 29, 1998, D.C. Law 12-86, § 701, 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 45-718.1.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on

Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 42-818.02. Procedures for release of deed of trust.

(a) For purposes of this section, the term:

(1) "Ancillary security instrument" means an assignment of leases with respect to the real property described in a deed of trust, an assignment of rents from or arising out of the real property described in a deed of trust, a financing statement filed in the financing statement records in the Office of the Recorder of Deeds of the District of Columbia with respect to fixtures on real property described in a deed of trust, and any other document or instrument that assigns, or creates a lien on, an interest in the real property described in a deed of trust as security for a promissory note.

(2) "Deed of trust" means a mortgage or a deed of trust encumbering real property located in the District of Columbia as the same may be modified, amended, supplemented, or restated.

(3) "Land records" means the land records in the Office of the Recorder of Deeds of the District of Columbia.

(4) "Promissory note" means a promissory note or other written evidence of indebtedness or obligation secured by a deed of trust.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, if (i) a deed of trust is not released as a lien on the real property described therein within a period of 12 years after the maturity date of the obligation secured by the deed of trust, or (ii) no determinable maturity date is recited in the deed of trust and 35 years have elapsed since the date of recordation of the deed of trust among the land records (or, if the deed of trust has been modified or extended, the last recorded modification or extension), then the promissory

note secured by the deed of trust shall be deemed conclusively to have been paid and satisfied. The deed of trust shall, without any action on the part of the owner or other person having an interest in the real property described in the deed of trust, be deemed to have been automatically released as of the last day of the period referred to in clause (i) or (ii) of this paragraph, as the case may be, and the deed of trust shall no longer constitute a lien on, or be enforceable against, the real property described therein.

(2) Paragraph (1) of this subsection shall not apply if:

(A) A Notice of Foreclosure with respect to a deed of trust has been recorded among the land records within 60 days before the expiration of the applicable time period referred to in (i) or (ii) of paragraph (1) of this subsection, or (ii) as of the last day of the applicable time period referred to in clause (i) or (ii) of paragraph (1) of this subsection, a proceeding to enforce the lien of a deed of trust is pending in a court of competent jurisdiction.

(c) A deed of trust may be validly released as a lien on real property in the District of Columbia by any one of the following means:

(1)(A) A deed of trust securing a lost, misplaced or destroyed promissory note which has been fully paid and satisfied may be released as a lien on the real property described therein by recording an affidavit among the Land Records. The affidavit, which shall be executed by the holder of the lost, misplaced or destroyed promissory note, or by the trustee or trustees named in the original deed of trust or subsequently appointed by a recorded instrument of substitution, shall state that (i) the promissory note has been fully paid and satisfied, (ii) the original promissory note has been lost, misplaced, or destroyed and, if the affiant is the holder of the promissory note, neither the promissory note nor any interest therein has been transferred, assigned, or negotiated to any other person, (iii) the affiant has been unable to locate the promissory note despite a diligent search, and (iv) the affiant release the deed of trust identified by recording reference, as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the affidavit shall be effective to release the deed of trust as a lien on the real property described therein with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(2)(A) A deed of trust may be released as a lien on the real property described therein by recording the original promissory note, marked "paid" or "canceled" on its face by the holder, among the land records with an attached affidavit executed by the holder, or by an officer of the title insurance company or validly licensed title insurance agent which disbursed funds in payment of the promissory note, stating that the promissory note has been fully paid or satisfied and releasing the deed of trust as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the original promissory note with the required affidavit attached shall be effective to release the deed of trust as a

lien on the real property with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(3) A deed of trust may be released as a lien on the real property described therein by recording a certificate of satisfaction executed by the beneficiary, mortgagee, assignee, or trustee fully identifying the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released, and stating that the deed of trust is released as a lien on the real property described therein, or, if the deed of trust is being released as a lien on less than all of the real property described therein, describing the part of the real property then being released.

(d) A certificate of satisfaction shall comply with the requirements of subsection (c)(3) of this section, shall be acknowledged in the manner required for the acknowledgement of a deed, and shall be in the following form:

CERTIFICATION OF SATISFACTION

KNOW ALL BY THESE PRESENTS:

That (name, title), representing (beneficiary), does hereby certify and acknowledge, under penalties of perjury, that the promissory note or other evidence of indebtedness secured by that certain mortgage/deed of trust made by _____ to _____, mortgage/trustee(s), dated _____ and recorded _____ as Instrument No. _____ among the Land Records of the District of Columbia, which encumbers the real property described in Exhibit A attached hereto, has been fully paid and satisfied and that _____ was, at the time of satisfaction, the holder of the promissory note or other evidence of indebtedness and that the lien of the said mortgage/deed of trust is hereby released.

The property encumbered by said mortgage/deed of trust is described as follows:

WITNESS the hand and seal of the party making this certification this _____ day of _____, _____.

(ACKNOWLEDGMENT)

(e)(1) If a promissory note is paid or satisfied in full, the holder shall, within 30 days after receipt of such payment or within 30 days after such satisfaction, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, to the person making such payment or causing such promissory note to be satisfied, one or more of the documents, instruments and affidavits, in one of the forms permitted by subsection (c) of this section, sufficient to release the deed of trust securing such promissory note as a lien against the real property described in the deed of trust.

(2) If a promissory note is paid or satisfied in part, and if by the terms of the promissory note, the deed of trust securing the promissory note or a separate agreement between the parties, the person making such partial payment or causing such partial satisfaction to be made is entitled to a release of a part of the real property encumbered by the lien of the deed of trust, the holder of the promissory note shall comply with the provisions of subsection

(c)(3) of this section in the same manner as if the promissory note were paid or satisfied in full, except that the release shall apply only to the part of the real property encumbered by the lien of the deed of trust which the holder is obligated, by the terms of the promissory note, the deed of trust or the separate agreement, to release on account of such partial payment or satisfaction.

(3) If a holder of a promissory note secured by a deed of trust fails to execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, the documents, instruments, or affidavits required to release the deed of trust, in whole or in part, within the time, and in the manner, required by paragraph (1) or (2) of this subsection, and if the holder's failure continues for more than 30 days after the holder receives a written request therefor from the person entitled to the release or such person's agent, then holder shall pay to the person entitled to the release a penalty in the amount of \$50 per day, shall be liable to such person for all actual and consequential damages caused by the holder's failure timely to deliver or record the full or partial release, and shall pay or reimburse such person for all costs and expenses, including reasonable attorneys fees and disbursements, relating to or arising out of the enforcement of such person's rights under this section. The penalty of \$50 per day shall be payable for the period beginning on and including the 31st day after the holder receives a written request for the release to, but not including, the day on which the holder delivers the executed and acknowledged documents, instruments or affidavits required to release the deed of trust.

(4) For purposes of this subsection, (i) a payment in the form of an electronic transfer of immediately available funds to an account in a commercial bank, a savings bank, a savings and loan association, a credit union or a similar financial institution shall be deemed to be made when the financial institution confirms receipt of the funds to the owners of the account, (ii) a payment in the form of a check issued or certified by a national or state bank shall be deemed to be made upon receipt of the check, and (iii) payment in the form of a check that is not issued or certified by a national or state bank shall be deemed to be made on the first day on which the holder receives the proceeds of collection of such check in immediately available funds.

(f) If a deed of trust is released, or deemed released, as a lien on all of the real property described therein, the release of the deed of trust shall be deemed automatically to release any ancillary security instrument that secures the same promissory note secured by the deed of trust. This provision shall not apply if the document recorded among the land records expressly states that the release of the deed of trust shall not release the ancillary security instrument.

FORM OF RELEASE AFFIDAVIT

FOR LOST, MISPLACED, OR DESTROYED PROMISSORY NOTE PER

§ 45-721(C)(1) [see now § 42-1101(3)(A)]:

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I was the last known holder of a certain promissory note (or the

trustees named in the original deed of trust or substitute trustees appointed by an instrument of substitution recorded in the land records);

2. Despite diligent search, I have been unable to locate the original promissory note which has been lost, misplaced or destroyed, (if the holder add: and neither the promissory note nor any interest therein has been transferred, assigned or negotiated to any other person);

3. The promissory note has been fully paid and satisfied; and

4. The deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustee(s)) securing (grantee) and recorded in the land records on (date) in Liber _____, at Folio _____, as instrument no. _____ and constituting a lien upon that piece or parcel of land located in the District of Columbia and known as:

LOT _____ in SQUARE _____, (additional legal description, ex. subdivision) as per plat recorded in Liber _____ at Folio _____ among the land records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this _____ day of _____, _____.

STATE/DISTRICT of _____)

) ss:

COUNTY of _____)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that _____ party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the _____ day of _____, _____, personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this _____ day of _____, and:

My commission expires: _____

Notary Public

FORM OF RELEASE AFFIDAVIT

TO ACCOMPANY PROMISSORY NOTE § 45-721(2) [see now § 42-1101(3)(B)]:

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I am [the last known holder of the attached promissory note marked ["Paid" or "canceled"] or [an officer of the undersigned title insurance company] or [a validly licensed title insurance agent] which disbursed funds in payment of the promissory note;

2. the attached promissory note has been fully paid, canceled or satisfied; and

3. the deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustees) securing (grantee) and recorded in the Land Records on (date) in Liber _____, at Folio _____, as instrument

no. _____ and constituting a lien upon that piece or parcel of land located in the District of Columbia and known as:

LOT _____ in SQUARE _____, (additional legal description, ex. subdivision) as per plat recorded in Liber _____ at Folio _____ among the Land Records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this _____ day of _____, _____.

STATE/DISTRICT of _____)

) ss:

COUNTY of _____)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that _____ party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the _____ day of _____, _____, personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this _____ day of _____, and:

My commission expires: _____

Notary Public.

(March 3, 1901, 31 Stat. 1271, § 545b, as added Apr. 29, 1998, D.C. Law 12-86, § 701, 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 45-718.2.

Legislative history of Law 12-86. — For legislative history of D.C. Law 12-86, see Historical and Statutory Notes following § 42-818.01.

References in text. — Section 45-721, referred to in the Forms of Release Affidavit, did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

§ 42-819. Petition for deed of release after death of mortgagee or trustee; procedure; summary determination.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in the court having probate jurisdiction, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays,

after the service of said rule, why the prayer of the petition should not be granted. If said party cannot be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 42-814(b) and the execution of a deed of release by such new trustee.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 130, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(c); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(2); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

Prior Codifications. — 1981 Ed., § 45-719. 1973 Ed., § 45-619.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1,

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

§ 42-820. Conveyance by and for individuals with mental disabilities following court order.

It shall and may be lawful to and for any person or persons with mental retardation or mental illness or *non compos mentis*, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons with mental retardation or mental illness or *non compos mentis*, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons with mental retardation or mental illness or *non compos mentis*, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or

hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons with mental retardation or mental illness or *non compos mentis*, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and without mental retardation or mental illness or *non compos mentis*, or had by him, her, or themselves executed the same. All and every person and persons with mental retardation or mental illness or *non compos mentis*, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons with mental retardation or mental illness or *non compos mentis*, and only such trustee or mortgagee as aforesaid, shall and may be empowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages.

(4 Geo. 2, ch. 10, §§ 1, 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D.C., p. 78, § 11; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Apr. 24, 2007, D.C. Law 16-305, § 58, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-720. 1973 Ed., § 45-620.

Effect of amendments. — D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 16-305, in the section heading, substituted "individuals with mental disabilities" for "mentally handicapped"; substituted "persons with mental retardation or mental illness or non compos mentis" for "persons being idiot, lunatic, or non compos mentis" and substituted "without mental retardation or mental illness or non compos mentis" for "not idiot, lunatic, or non compos mentis".

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not

apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-801.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

CHAPTER 8A. MORTGAGES, DEEDS OF TRUST, AND FORECLOSURE [REPEALED].

Subchapter I. Definitions

Sec.

42-831.01. [Repealed].

Subchapter II. Lien Instruments

42-832.01 to 42-832.34. [Repealed].

Subchapter III. Trustees and Assignees for Foreclosure

42-833.01 to 42-833.09. [Repealed].

Subchapter IV. Sending of Notices; Default; Late Fees; Notice of Default; Notice of Acceleration; Right to Cure and Reinstate; Right to Redeem

42-834.01 to 42-834.07. [Repealed].

Subchapter V. Commencement of Foreclosure; Required Notices; Compliance with Laws

42-835.01 to 42-835.13. [Repealed].

Subchapter VI. Predatory Lending

42-836.01 to 42-836.04. [Repealed].

Subchapter VII. Circumstances When a Residential Lien Instrument May Be Foreclosed Only by Judicial Foreclosure

42-837.01 to 42-837.07. [Repealed].

Subchapter VIII. Expedited Hearing

Sec.

42-838.01, 42-838.02. [Repealed].

Subchapter IX. Judicial Foreclosure

42-839.01 to 42-839.03. [Repealed].

Subchapter X. Advertising of Foreclosure Sale

42-840.01 to 42-840.03. [Repealed].

Subchapter XI. Conduct of the Foreclosure Sale

42-841.01 to 42-841.12. [Repealed].

Subchapter XII. Audit of Foreclosure Sale

42-842.01 to 42-842.06. [Repealed].

Subchapter XIII. Conveyance of Real Property and Disbursement of Foreclosure Sale Proceeds

42-843.01 to 42-843.03. [Repealed].

Subchapter XIV. Miscellaneous

42-844.01 to 42-844.10. [Repealed].

Subchapter XV. [Reserved]

Subchapter XVI. Applicability

42-846.01. [Reserved].

42-846.02. [Repealed].

Subchapter I. Definitions.

§ 42-831.01. Definitions. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 101, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

Section 2 of the Protection from Predatory Lending and Mortgage Foreclosure Improvements Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-273, February 25, 2002, 49 DCR 1969), provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — Law 13-263, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000”, was introduced in Council and

assigned Bill No. 13-800, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-552 and transmitted to both Houses of Congress for its review. D.C. Law 13-263 became effective on April 3, 2001.

Legislative history of Law 14-132. — Law 14-132, the “Home Loan Protection Act of 2002”, was introduced in Council and assigned Bill No. 14-515, which was referred to the Committee on Consumer and Regulatory Af-

fairs. The Bill was adopted on first and second readings on February 5, 2002, and February 19, 2002, respectively. Signed by the Mayor on March 1, 2002, it was assigned Act No. 14-296 and transmitted to both Houses of Congress for its review. D.C. Law 14-132 became effective on May 7, 2002.

Effective date. — Section 602(a) of Law 14-132 provided: “The Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, effective April 3, 2001 (D.C. Law 13-263; 48 DCR 991), is repealed as of November 6, 2001.”

Subchapter II. Lien Instruments.

§ 42-832.01. General. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 201, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.02. Creation; statement of monetary value; other obligations secured. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 202, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.03. Lien instrument creates security interest only; negative covenant does not create a lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 203, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.04. Parties to a lien instrument and addresses. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 205, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

§ 42-832.05. Information form required in every deed of trust or mortgage encumbering residential real property. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 205, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.06. Execution, acknowledgement and recordation of a lien instrument in the same manner as a deed. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 206, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.07. Duty of Recorder of Deeds. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 207, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.08. Assignment, transfer, enforcement and performance of deed of trust or mortgage. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 208, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.09. Assignment or transfer of real property encumbered by lien instrument and liability of transferor and transferee to noteowner and each other. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 209, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.10. Obligation to provide name and address of noteowner, interested persons in note, amounts due and status of lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 210, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.11. Decisions by multiple noteowners. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 211, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.12. Independent trustee or assignee for foreclosure required for noteowner, beneficiary, mortgagee, or secured party to bid at a power of sale foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 212, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.13. Right to determine reasonable foreclosure sale terms and conditions if deed of trust or mortgage does not state them. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 213, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Tem-

porary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.14. Deed-in-lieu of foreclosure or deed to noteowner’s designee; no effect on senior or subordinate interests. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 214, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.15. Redemption from noteowner by performance or tender. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 215, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.16. Prepayment of note secured by lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 216, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.17. Release of lien instrument after time period when no enforcement. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 217, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.18. Authorized forms of release of lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 218, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see

§ 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.19. Noteowner's obligation to provide release of lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 219, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.20. Effective date of noteowner's receipt of payments. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 220, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.21. When deed absolute, conditional sale, or contract for a deed will be considered a lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 221, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.22. Priority: effect of lien instrument priority on foreclosure; effect of lien instrument priority on unrecorded leases. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 222, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.23. Priority: purchase money lien instruments. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 223, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.24. Priority: replacement and modification of senior lien instruments; effect on intervening interests. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 224, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.25. Priority: effect of priority on the disposition of foreclosure surplus. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 225, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.26. Priority: lien on after-acquired real property. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 226, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.27. Priority: subrogation. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 227, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.28. Priority: subordination. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 228, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.29. Priority: foreclosure of wrap-around lien instruments. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 229, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Tem-

porary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.30. Future advances: general. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 230, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.31. Future advances: expenditures for the protection of the real property encumbered by a lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 231, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.32. Future advances: lien instruments securing future advances for improvements to residential real property. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 232, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.33. Simultaneous foreclosure of lien instrument and ancillary lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 233, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-832.34. Mortgaging rents. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 234, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see

§ 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter III. Trustees and Assignees for Foreclosure.

§ 42-833.01. Qualification of trustee or assignee for foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 301, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.02. Trustee or assignee for foreclosure holds security interest without automatic right of possession; survival of trustee's or assignee's for foreclosure security interest. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 302, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.03. Noteowner's or beneficiary's or mortgagee's right to substitute, add or remove trustees or assignees for foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 303, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not

apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-86. — For Law 14-86, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.04. Trustee's or assignee's for foreclosure right to resign. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 304, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.05. Trustee or assignee for foreclosure discretionary and ministerial acts. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 305, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.06. Petition for certificate of satisfaction after death or unavailability or refusal to act of trustee or assignee for foreclosure; procedure; summary determination. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 306, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.07. Standard of trustee's or assignee's for foreclosure conduct; indemnification of Trustee and assignee for foreclosure; Trustee or assignee for foreclosure bond requirements. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 307, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.08. Trustee or assignee for foreclosure determines foreclosure process consistent with noteowner's, beneficiary's, mortgagee's, or secured party's written instructions. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 308, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-833.09. Trustee or assignee for foreclosure commission and compensation for foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 309, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter IV. Sending of Notices; Default; Late Fees; Notice of Default; Notice of Acceleration; Right to Cure and Reinstate; Right to Redeem.

§ 42-834.01. Sending of notices; notice of default required. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 401, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-834.02. Notice of default required; no effect on late fees. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 402, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-834.03. Minimum grace period for borrower and owner under residential lien instrument. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 403, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For

Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For

Law 14-132, see notes following § 42-831.01.

§ 42-834.04. Notice of acceleration required; right of reinstatement until notice of acceleration sent or received; notice of commencement of foreclosure satisfies notice of acceleration. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 404, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-834.05. Borrower’s and owner’s right to cure default and reinstate obligation secured by residential lien instrument prior to foreclosure sale auction 3 times in any 12 month period. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 405, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-834.06. Certain subordinate interest holder's right to cure and reinstate note secured by residential lien instrument prior to foreclosure sale auction once in any 12 month period. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 406, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-834.07. Right to redeem after acceleration. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 407, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter V. Commencement of Foreclosure; Required Notices; Compliance with Laws.

§ 42-835.01. Accrual of right to foreclose. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 501, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Tem-

porary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.02. Notice of commencement of foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 502, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.03. Minimum time period before foreclosure sale auction on residential lien instrument securing a home loan. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 503, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.04. Noteowner cannot produce original note; form of lost note affidavit and indemnification to borrower, owner and mayor. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 504, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.05. Noteowner’s remedies on the note and the lien instrument; credit on note or other obligation for foreclosed real property; limitation on time to seek deficiency judgment. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 505, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of section, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.06. No waiver of protection laws. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 506, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.07. Omitted parties; no right to object for persons who were properly sent notice. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 507, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.08. Appointment of a receiver; effect on existing leases; priorities between competing receivers. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 508, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.09. Waste. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 509, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.10. Beneficiary’s, trustee’s, mortgagee’s, or assignee’s for foreclosure right to funds paid under casualty insurance or taking in eminent domain. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 510, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.11. Effect of foreclosure on beneficiary’s, trustee’s, mortgagee’s, or assignee’s for foreclosure right to insurance and eminent domain proceeds. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 511, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Tem-

porary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.12. Acquisition of foreclosure title by the owner or other subordinate interest holder. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 512, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-835.13. Availability of documents for inspection in the District of Columbia. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 513, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

*Subchapter VI. Predatory Lending.***§ 42-836.01. Prohibited acts and practices. [Repealed].**

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-836.02. Violations and remedies. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 602, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-836.03. Foreclosure against home borrowers subjected to violations of 42-836.01. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 603, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act

14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see

§ 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-836.04. Other prohibitions and remedies. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 604, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter VII. Circumstances When a Residential Lien Instrument May Be Foreclosed Only by Judicial Foreclosure.

§ 42-837.01. Request for judicial foreclosure of residential lien instrument [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 701, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.02. Written demand for judicial foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 702, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.03. Required conditions during challenge. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 703, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.04. Failure to continuously satisfy the required conditions during challenge. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 704, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.05. Noteowner's, beneficiary's, mortgagee's, and secured party's options in response to request for judicial foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 705, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.06. Failure of trustee or assignee for foreclosure to pursue expedited hearing. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 706, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-837.07. Diligent pursuit of expedited hearing. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 707, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter VIII. Expedited Hearing.

§ 42-838.01. Request for expedited hearing. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 801, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-838.02. Determination at expedited hearing. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 802, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter IX. Judicial Foreclosure.

§ 42-839.01. Commencement of judicial foreclosure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 901, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-839.02. Determinations by the court. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 902, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-839.03. No home loan or no violation of 42-836.01. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 903, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

*Subchapter X. Advertising of Foreclosure Sale.***§ 42-840.01. Eligible publications for advertisement of foreclosure sale. [Repealed].**

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1001, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-840.02. Content of foreclosure sale advertisement. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1002, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-840.03. Required publication of foreclosure sale advertisement. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1003, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter XI. Conduct of the Foreclosure Sale.

§ 42-841.01. Business day; time; place. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1101, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.02. Noteowner, beneficiary, mortgagee, or secured party right to bid; trustee or assignee for foreclosure may not bid; waiver of deposit. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1102, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.03. Adequacy of foreclosure sale price; noteowner's, beneficiary's, mortgagee's, or secured party's conditional agreements before foreclosure sale auction. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1103, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.04. Memorandum of foreclosure sale. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1104, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.05. Postponement or delay of foreclosure sale auction. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1105, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.06. Marshalling; order of foreclosure on multiple parcels. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1106, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.07. Merger doctrine inapplicable to lien instruments. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1107, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.08. Right to cancel foreclosure sale before completion. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1108, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.09. Right to cancel foreclosure sale before issuance of auditor’s approval of foreclosure sale procedure. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1109, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.10. Effect of completed foreclosure sale; no statutory redemption. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1110, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.11. Liability of accepted bidder to complete foreclosure sale acquisition. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1111, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-841.12. Accepted bidder’s right to possession of real property after foreclosure sale acquisition. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1112, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter XII. Audit of Foreclosure Sale.

§ 42-842.01. Required deliveries to auditor. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1201, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-

86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency

Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-842.02. Time deadline for deliveries to auditor. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1202, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-842.03. Claims by subordinate interest holders. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1203, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-842.04. Distribution of foreclosure sale proceeds. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1204, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-842.05. Auditor’s reports on foreclosure procedures and distributions. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1205, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-842.06. Recording of auditor’s report on foreclosure sale procedures; presumption of validity of foreclosure sale and limitation of actions; use of auditor’s report on the distribution of foreclosure sale proceeds and deficiency for deficiency judgment. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1206, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

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For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter XIII. Conveyance of Real Property and Disbursement of Foreclosure Sale Proceeds.

§ 42-843.01. Pre-conditions for conveyance of real property. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1301, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-843.02. Conveyance of real property and distribution of foreclosure sale proceeds. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1302, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-843.03. Duties of purchaser at foreclosure sale. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1303, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter XIV. Miscellaneous.

§ 42-844.01. Determination of auctioneer’s fee. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1401, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.02. Determination of attorney’s fee. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1402, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.03. No waivers by borrowers or owners. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1403, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.04. Standard of conduct. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1404, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.05. Land installment contracts. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1405, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements

Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.06. Rulemaking authority. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1406, 48 DCR 991; Oct. 26, 2001, D.C. Law 14-42, § 20(a), 48 DCR 7612; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) amendment of section, see § 20(a) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-42. — Law 14-42, the “Technical Correction Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Delegation of Authority. — Delegation of Authority Pursuant to DC Law 13-263, The “Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000”, see Mayor’s Order 2001-91, June 22, 2001 (48 DCR 6010).

§ 42-844.07. FTE authority to implement this chapter. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1407, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.08. Reporting to Council. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1408, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.09. Standards for approval of subprime loan programs. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1409, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

§ 42-844.10. Acceptance of mortgage or deed of trust by the Recorder of Deeds. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1410, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the

Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

Subchapter XV. [Reserved].

Subchapter XVI. Applicability.

§ 42-846.01. [Reserved].

§ 42-846.02. Applicability. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-263, § 1602, 48 DCR 991; Oct. 26, D.C. Law 14-42, § 20(b), 48 DCR 7612; May 7, 2002, D.C. Law 14-132, § 602(a), 49 DCR 2551.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency legislation. — Section 2 of Act 14-188, the “Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act”, deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) amendment of section, see § 20(b) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) repeal of chapter, see § 403(a) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative history of Law 13-263. — For Law 13-263, see notes following § 42-831.01.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 42-844.06.

Legislative history of Law 14-132. — For Law 14-132, see notes following § 42-831.01.

CHAPTER 9. OWNERSHIP OF REAL PROPERTY BY ALIENS AND NONRESIDENTS.

Sec.

42-901. Ownership of real estate by aliens.

42-902. Ownership of legations or residences by representatives of foreign governments.

Sec.

42-903. Resident agent required for care and maintenance of vacant property owned by nonresidents.

§ 42-901. Ownership of real estate by aliens.

The Act entitled "An Act to better define and regulate the rights of aliens to hold and own real estate in the territories," approved March 2, 1897 (48 U.S.C. §§ 1501-1507), be, and the same is hereby, amended so as to extend to aliens the same rights and privileges concerning the acquisition, holding, owning, and disposition of real estate in the District of Columbia as by that Act are conferred upon them in respect of real estate in the territories of the United States. All laws and parts of laws so far as they conflict with the provisions of this section are hereby repealed.

(Feb. 23, 1905, 33 Stat. 733, ch. 733.)

Prior Codifications. — 1981 Ed., § 45-1301. 1973 Ed., § 45-1501.

CASE NOTES

In general.

Devise of remainder in fee to town in Canada, even if subject to attack through escheat proceedings, was not open to attack by testator's lineal descendants. Act March 3, 1887, 24 Stat. 476, amended by Act March 2, 1897, 48 U.S.C. §§ 1501-1508, and Act Feb. 23, 1905, 48 U.S.C. § 1508. *Larkin v. Washington Loan & Trust Co.*, 31 F.2d 635, 1929 U.S. App. LEXIS 3506 (1929).

Devise of remainder in fee of realty in District of Columbia to town in Canada held authorized. Act March 2, 1897, § 2, 48 U.S.C. § 1502, amending Act March 3, 1887, 24 Stat. 476; Act Feb. 23, 1905, 48 U.S.C. § 1508. *Larkin v. Washington Loan & Trust Co.*, 31 F.2d 635, 1929 U.S. App. LEXIS 3506 (1929).

§ 42-902. Ownership of legations or residences by representatives of foreign governments.

An Act entitled "An Act to restrict the ownership of real estate in the territories to American citizens, and so forth," approved March 3, 1887, be so amended that the same shall not apply to or operate in the District of Columbia, so far as relates to the ownership of legations, or the ownership of residences by representatives of foreign governments, or attaches thereof.

(Mar. 9, 1888, 25 Stat. 45, ch. 30.)

Prior Codifications. — 1981 Ed., § 45-1302. 1973 Ed., § 45-1505.

§ 42-903. Resident agent required for care and maintenance of vacant property owned by nonresidents.

(a) Any person who is the owner of vacant property in the District of Columbia and who is not a resident of the District of Columbia must appoint or employ an agent who is a resident of the District of Columbia. This person shall be authorized by the owner and shall be responsible for the care and maintenance of the property. The owner shall notify the Director of the Department of Finance and Revenue of the appointment of the agent and of any change in the agent or in the address of the agent. Any owner of vacant property in the District of Columbia found to be in violation of this section shall be subject to a penalty of \$300.

(b)(1) A person or entity that is the nonresident owner of one or more rental units shall appoint and continuously maintain a registered agent for the service of process. The appointment shall be made by filing a statement with the Mayor. The registered agent shall be an individual who is a resident of the District of Columbia or an organization incorporated in the District of Columbia. If the owner changes the registered agent, or if the name or address or any other information about the registered agent changes after the statement is filed with the Mayor, the nonresident owner shall file a statement notifying the Mayor of the change.

(2) The Mayor shall serve as the registered agent for the nonresident owner if a registered agent is not appointed under paragraph (1) of this subsection or if the individual or organization named ceases to serve as the resident agent and no successor is appointed.

(3) The Mayor shall impose a reasonable fee to cover the cost of administering this section.

(c) For purposes of this section, the term "rental unit" shall have the same meaning as set forth in § 42-3501.03(33).

(d) A nonresident owner of one or more rental units in the District of Columbia in violation of this section shall be subject to a penalty of \$300.

(e) Any fees and penalties collected under this section shall be deposited in the fund established by § 6-711.01(b)(1).

(Mar. 10, 1983, D.C. Law 4-205, § 5, 30 DCR 188; Apr. 27, 2001, D.C. Law 13-281, § 106, 48 DCR 1888.)

Prior Codifications. — 1981 Ed., § 45-1311.

Effect of amendments. — D.C. Law 13-281 designated subsec. (a): in the last sentence of subsec. (a), substituted "a penalty of \$300" for "a fine of \$50"; and added subsecs. (b) to (e).

Legislative history of Law 4-205. — Law 4-205, the "Summary Abatement of Life-or-Health Threatening Conditions Act of 1982," was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings

on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-281. — Law 13-281, the "Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-646, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 8, 2000, and

December 5, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-578 and transmitted to both Houses of Congress for its review. D.C. Law 13-281 became effective on April 27,

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997,

issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

CHAPTER 10. POWERS RELATING TO REALTY.

Sec.

- 42-1001. "Power" defined.
- 42-1002. General power.
- 42-1003. Special power.
- 42-1004. Beneficial power.
- 42-1005. Giving of absolute power — To owner of limited estate.
- 42-1006. Giving of absolute power — To owner of unlimited estate.
- 42-1007. Giving of absolute power — Where no remainder on grantee's estate.
- 42-1008. Construction of power to devise inheritance given to tenant with limited estate.
- 42-1009. Right of grantor to reserve power.
- 42-1010. Liability of special and beneficial power in equity.
- 42-1011. General powers in trust.

Sec.

- 42-1012. Special powers in trust.
- 42-1013. Trust powers imperative — Duty upon grantee.
- 42-1014. Trust powers imperative — Effect of grantee's right of selection of objects of trust.
- 42-1015. Beneficiaries to take equally unless otherwise directed; effect of giving trustee discretion.
- 42-1016. Execution of trust powers for benefit of creditors and assignees.
- 42-1017. Writing needed to execute power.
- 42-1018. Power to be executed by devise, will, or grant, as directed.
- 42-1019. Grantee may execute power without direct reference to such.

§ 42-1001. "Power" defined.

A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1037.)

Prior Codifications. — 1981 Ed., § 45-101. 1973 Ed., § 45-1001.

Editor's notes. — Uniform Disclaimer of Property Interests Act: See § 19-1501 et seq.

CASE NOTES

In general.

Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority

to file complaint for possession of property. *American Sec. Bank v. Cummings*, 120 WLR 88 (Super. Ct. 1991).

§ 42-1002. General power.

A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1038.)

Prior Codifications. — 1981 Ed., § 45-102.

1973 Ed., § 45-1002.

CASE NOTES

Testamentary power of appointment.

For purposes of qualifying life interest left to wife under testamentary trust for marital deduction, power of appointment to wife was general and thus authorized an appointment of trust property to her estate, even though power

was subject to condition that it be exercised by will. D.C. Code § 45-1002; 26 U.S.C. (I.R.C.1954) § 2056(a). *Estate of Mittleman v. Commissioner*, 522 F.2d 132, 1975 U.S. App. LEXIS 12116 (C.A.D.C. 1975).

§ 42-1003. Special power.

A power is special:

(1) Where the persons or class of persons to whom the disposition of the lands under the power is to be made is designated;

(2) Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1039.)

Prior Codifications. — 1981 Ed., § 45-103. 1973 Ed., § 45-1003.

§ 42-1004. Beneficial power.

A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1040.)

Prior Codifications. — 1981 Ed., § 45-104. 1973 Ed., § 45-1004.

§ 42-1005. Giving of absolute power — To owner of limited estate.

Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1041.)

Section references. — This section is referred to in § 42-1008.

Prior Codifications. — 1981 Ed., § 45-105. 1973 Ed., § 45-1005.

§ 42-1006. Giving of absolute power — To owner of unlimited estate.

Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1042.)

Section references. — This section is referred to in § 42-1008.

Prior Codifications. — 1981 Ed., § 45-106. 1973 Ed., § 45-1006.

§ 42-1007. Giving of absolute power — Where no remainder on grantee's estate.

In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1043.)

Section references. — This section is referred to in § 42-1008.

Prior Codifications. — 1981 Ed., § 45-107.
1973 Ed., § 45-1007.

§ 42-1008. Construction of power to devise inheritance given to tenant with limited estate.

Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of §§ 42-1005 to 42-1007.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1044.)

Prior Codifications. — 1981 Ed., § 45-108. 1973 Ed., § 45-1008.

§ 42-1009. Right of grantor to reserve power.

The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this chapter as if granted to another.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1045.)

Prior Codifications. — 1981 Ed., § 45-109. 1973 Ed., § 45-1009.

§ 42-1010. Liability of special and beneficial power in equity.

Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1046.)

Prior Codifications. — 1981 Ed., § 45-110. 1973 Ed., § 45-1010.

§ 42-1011. General powers in trust.

A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1047.)

Prior Codifications. — 1981 Ed., § 45-111. 1973 Ed., § 45-1011.

§ 42-1012. Special powers in trust.

A special power is in trust:

(1) When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power;

(2) When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power.

(Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1048.)

Prior Codifications. — 1981 Ed., § 45-112. 1973 Ed., § 45-1012.

§ 42-1013. Trust powers imperative — Duty upon grantee.

Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1049.)

Prior Codifications. — 1981 Ed., § 45-113. 1973 Ed., § 45-1013.

§ 42-1014. Trust powers imperative — Effect of grantee's right of selection of objects of trust.

A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1050.)

Prior Codifications. — 1981 Ed., § 45-114. 1973 Ed., § 45-1014.

§ 42-1015. Beneficiaries to take equally unless otherwise directed; effect of giving trustee discretion.

Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any 1 or more of such persons in exclusion of the others.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1051.)

Prior Codifications. — 1981 Ed., § 45-115. 1973 Ed., § 45-1015.

§ 42-1016. Execution of trust powers for benefit of creditors and assignees.

The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1052.)

Prior Codifications. — 1981 Ed., § 45-116. 1973 Ed., § 45-1016.

§ 42-1017. Writing needed to execute power.

No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1053.)

Prior Codifications. — 1981 Ed., § 45-117. 1973 Ed., § 45-1017.

CASE NOTES

In general.

Where power of appointment could be exercised only by will, attempt to assign part of donee's interest by a contract was invalid. *Mondell v. Thom*, 143 F.2d 157, 1944 U.S. App. LEXIS 3032 (1944).

Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. *American Sec. Bank v. Cummings*, 120 WLR 88 (Super. Ct. 1991).

§ 42-1018. Power to be executed by devise, will, or grant, as directed.

Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1054.)

Cross references. — Wills, see §§ 18-108, 18-303.

Prior Codifications. — 1981 Ed., § 45-118. 1973 Ed., § 45-1018.

§ 42-1019. Grantee may execute power without direct reference to such.

Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

(Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1055.)

Prior Codifications. — 1981 Ed., § 45-119. 1973 Ed., § 45-1019.

CHAPTER 11. RECORDATION TAX ON DEEDS.

Sec.	Sec.
42-1101. Definitions.	42-1108. [Repealed].
42-1102. Deeds exempt from tax.	42-1108.01. Enforcement.
42-1102.01. Sales or assignments of instruments on secondary market exempt from tax.	42-1109 to 42-1113. [Repealed].
42-1102.02. Transfer of economic interest defined.	42-1114. Appeal from deficiency assessment.
42-1103. Imposition of tax; rate; return; contents; liability for tax; extension of period for filing, and waiver of, return.	42-1115, 42-1116. [Repealed].
42-1104. Computation of tax where absence of or no consideration; when fair market value to be shown on return; consideration on deeds of trust or mortgages.	42-1117. Promulgation of rules and regulations by Mayor.
42-1105, 42-1106. [Repealed].	42-1118. [Repealed].
42-1107. Burden on taxpayer to prove deed exempt from tax.	42-1119. Elimination of fractional stamps or devices; payment of tax to nearest dollar.
	42-1120. [Repealed].
	42-1121. Illegal acts relating to stamps and other devices; penalties.
	42-1122. Collected moneys to be deposited in United States Treasury.
	42-1123. Separability clause.
	42-1124. Appropriations to carry out provisions of chapter.

§ 42-1101. Definitions.

When used in this chapter, unless otherwise required by the context:

- (1) The word "District" means the District of Columbia.
- (2) The word "Mayor" means the Mayor of the District of Columbia, or his duly authorized agents or representatives.
- (3)(A) The word "deed" means any document, instrument, or writing, including a security interest instrument, wherever made, executed, or delivered, pursuant to which:
 - (i) Title to real property is conveyed, vested, granted, bargained, sold, transferred, or assigned;
 - (ii) An interest in real property (including an estate for life) is conveyed, vested, granted, bargained, sold, transferred, or assigned;
 - (iii) A security interest in real property is conveyed, vested, granted, bargained, sold, transferred, or assigned; or
 - (iv) A transfer of an economic interest in real property is evidenced pursuant to § 42-1102.02.
- (B) The word "deed" shall not include a will or a lease or ground rent for a term (with renewals) that is less than 30 years.
- (4) The words "real property" mean every estate or right, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District.
- (5) The word "consideration," except as otherwise provided in § 42-1104 of this chapter, means the price or amount actually paid, or required to be paid, for real property including any mortgages, liens, encumbrances thereon, construction loan deeds of trust or mortgages or permanent loan deeds of trust or mortgages.
- (6) The word "person" means an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, any individual acting in a fiduciary or representative capacity, whether appointed

by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by 2 or more persons.

(7) The word “deficiency” as used in this chapter means the amount or amounts by which the tax imposed by this chapter as determined by the Mayor exceeds the amount shown as the tax upon the return of the person or persons liable for the payment thereof.

(8) The word “taxpayer” means any person required by this chapter to pay a tax, or file a return.

(9) The words “construction loan deed of trust or mortgage” mean a deed of trust or mortgage upon real estate which is given to secure a loan for new real estate construction.

(10) The words “permanent loan deed of trust or mortgage” mean a deed of trust or mortgage upon real estate which secures an instrument made by the same obligors who made the instrument which the construction loan deed of trust or mortgage secured, and which conveys substantially the same real estate.

(11) The phrase “controlling interest” means:

(A) More than 50% of the total voting power of all classes of stock of a corporation or more than 50% of the total fair market value of all classes of stock of a corporation;

(B) More than 50% of the capital or profits in a partnership, association, or other unincorporated entity; or

(C) More than 50% of the beneficial interests in a trust.

(12) The phrase “purchase money mortgage or purchase money deed of trust” means a mortgage or deed of trust provided as payment or part payment of the purchase price of real property.

(13) The phrase “security interest” means any interest in real property acquired for the purpose of securing payment of a debt.

(14) The phrase “security interest instrument” means any instrument which conveys, vests, grants, transfers, bargains, sells, or assigns a security interest in real property. A security interest instrument may include the following:

(A) A mortgage;

(B) A deed of trust;

(C) A financing statement;

(D) A refinancing statement; or

(E) Another document, instrument, or writing which creates an encumbrance on real property.

(15) The phrase “supplemental deed” means a deed that confirms, corrects, modifies, or supplements a prior recorded deed without additional consideration.

(Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 301; Sept. 13, 1980, D.C. Law 3-92, § 101(a), 27 DCR 3390; Mar. 10, 1982, D.C. Law 4-72, § 3(a), 28 DCR 5273; Sept. 9, 1989, D.C. Law 8-20, § 2(a), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(a), 41 DCR 2096; June 9, 2001, D.C. Law 13-305, § 506(a), 48 DCR 334; Oct. 26, 2001, D.C. Law 14-42, § 11(b), 48 DCR 7612.)

Cross references. — Exemptions for qualifying lower income homeownership households and cooperative housing associations, see § 47-3503.

Nonprofit housing organizations, lower income homeownership tax abatement and incentives, see § 47-3505.

Prior Codifications. — 1981 Ed., § 45-921. 1973 Ed., § 45-721.

Effect of amendments. — D.C. Law 13-305, in par. 3(A)(ii), inserted "(including an estate for life)"; and, in par. 3(B), substituted "lease or ground rent for a term (with renewals) that is less than 30 years" for "a lease with a term of 99 years or less".

D.C. Law 14-42 validated the previously made technical correction in par. 3(B).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6(a) of the Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

Emergency legislation. — For temporary (90 day) amendment of section, see § 6(a) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

For temporary (90 day) amendment of section, see § 11(b) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

Legislative history of Law 3-92. — Law 3-92, the "District of Columbia Revenue Act of 1980," was introduced in Council and assigned Bill No. 3-285, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 17, 1980 and July 1, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-214 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-72. — Law 4-72, the "Technical Amendments to the District of Columbia Revenue Act of 1980 Act of 1981," was introduced in Council and assigned Bill No. 4-174, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981 and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-119 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-20. — Law 8-20, the "District of Columbia Recordation of Economic Interests in Real Property Tax Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-169, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on

June 14, 1989, it was assigned Act No. 8-42 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Legislative history of Law 13-305. — Law 13-305, the "Tax Clarity Act of 2000", was introduced in Council and assigned Bill No. 13-586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 2, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-501 and transmitted to both Houses of Congress for its review. D.C. Law 13-305 became effective on June 9, 2001.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 42-844.06.

Transfer of Functions. — Part IV-C, 2. b. (12) of Organization Order No. 3, dated December 13, 1967, assigned to the Office of the Finance Officer, Department of General Administration, the function (except as to such duties and functions as are performed in conjunction therewith by the Recorder of Deeds) of administering, as agent of the Mayor, the provisions of title III of Public Law 87-408 (now classified to this subchapter). Functions as stated in Part IV-C of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Functions of the Recorder of Deeds were transferred in part to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983, and in part to a Recorder of Deeds Division in the Department of Finance and Revenue by Reorganization Plan No. 3 of 1983, effective March 31, 1983.

Editor's notes. — Application of Law 8-20: Section 4 of D.C. Law 8-20 provided that the act shall apply to all transfers of an economic interest in real property in the District after September 30, 1989.

Application of Law 10-128: Section 801 of D.C. Law 10-128 provided that sections 101, 102, 104, 105, 106, 107, and 108 shall apply as of June 1, 1994.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Deeds whereby taxpayer, a limited partnership, received all right, title and interest of an unincorporated business trust and various parcels of real property in the District of Columbia and, in return, transferred interests in the partnership to the trust did not merely "confirm, correct, modify or supplement a deed previously recorded" so as to qualify for statu-

tory exemption from deed recordation tax, but represented a conveyance or transfer of real property for consideration between distinct legal entities and, as such, amounted to a transaction which was subject to deed recordation tax. D.C. Code 1973, §§ 45-722, subd. 6, 45-723. *Columbia Realty Venture v. District of Columbia*, 433 A.2d 1075, 1981 D.C. App. LEXIS 325 (1981).

§ 42-1102. Deeds exempt from tax.

The following deeds shall be exempt from the tax imposed by this chapter:

- (1) Repealed;
- (2) Deeds to property acquired by the United States of America or the District of Columbia, unless its taxation has been authorized by Congress;
- (3) Deeds to real property acquired by an institution, organization, corporation, or government entitled to exemption from real property taxation under § 47-1002 (or exempt from recordation taxes under a law of the United States of America or the District of Columbia); provided, that, unless waived by regulation, a copy of a filed real property tax exemption application accompanies the deed at the time of recordation; provided further, that this exemption shall not apply to property which is exempt under § 47-1002(29) or § 47-1002(30);
- (4) Deeds to property acquired by an institution, organization, corporation, or association entitled to exemption from real property taxation by special act of Congress, which property was acquired solely for a purpose or purposes for which such special exemption was granted; provided, that a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation;
- (5) A purchase money mortgage or purchase money deed of trust that is recorded simultaneously with the deed conveying the real property for which the purchase money mortgage or purchase money deed of trust was obtained;
- (6) Supplemental deeds;
- (7) Deeds between spouses, parent and child, grandparent and grandchild, or domestic partners, as defined in § 32-701(3), without actual consideration therefor;
- (8) Tax deeds;
- (9) Deeds of release of property which is security for a debt or other obligation;
- (10) Deeds of personal representatives of decedents, acting under the provisions of Title 20, transferring to a distributee, without additional consideration, real property of a decedent or a life estate in the real property;

(11) When a permanent loan deed of trust or mortgage is submitted for recordation and the tax on the construction loan deed of trust or mortgage has been timely and properly paid, no additional tax liability arises under § 42-1103, except where the amount of the obligor's liability secured by the permanent loan deed of trust or mortgage exceeds the amount of his liability secured by the construction loan deed of trust or mortgage, in which case the tax shall be calculated only on the amount of such difference; provided, however, that such permanent loan deed of trust or mortgage shall contain a reference to the construction loan deed of trust or mortgage and the date and instrument number where it is recorded;

(12) Deeds to property transferred to a qualifying lower income homeownership household in accordance with § 47-3503(a);

(13) Deeds to property transferred to a qualifying nonprofit housing organization in accordance with § 47-3505(c);

(14) Deeds to property transferred to a cooperative housing association in accordance with § 47-3503(a)(2);

(15) Construction loan deeds of trust or mortgages or permanent loan deeds of trust or mortgages in accordance with § 47-3503(a)(3);

(16) Repealed.

(17) A deed by a transferor that conveys bare legal title to the trustee of a revocable trust, without consideration for the transfer, where the transferor is the beneficiary of the trust;

(18) A deed to property transferred to a beneficiary of a revocable trust as the result of the death of the grantor of the revocable trust;

(19) A deed to property transferred by the trustee of a revocable trust if the transfer would otherwise be exempt under this section if made by the grantor of the revocable trust;

(20) A deed to property transferred to a resident management corporation in accordance with § 47-3506.01;

(21) A security interest instrument in Class 1 Property, as that class of property is established pursuant to § 47-813(c-4), that contains no more than 5 dwelling units. Each security interest instrument submitted for recordation for which an exemption under this paragraph is claimed shall have affixed thereto an affidavit stating the following:

"I (we) the owner(s) of the real property described within certify, subject to criminal penalties for making false statements pursuant to § 22-2405 of the District of Columbia Code, that the real property described within is Class 1 Property, as that class of property is established pursuant to § 47-813(c-4), with 5 or fewer units.";

(22)(A) A deed to property transferred pursuant to § 29-1013;

(B) In order for limited liability companies to receive the exemption provided in subparagraph (A) of this paragraph, the Recorder of Deeds shall be notified, within 30 days, of any change to the members or interests in profits and losses during the 12-month period following the effective date of the conversion so that the applicable recordation tax can be imposed;

(C) Violation of the provisions of subparagraph (B) of this paragraph shall be punishable pursuant to § 42-1120 [repealed];

(23) A deed for the improvements known as the District of Columbia Correctional Treatment Facility, located on a portion of Lot 800 of Square 1112E, with a street address of 1901 E Street, S.E.;

(24)(A) Deeds conveying, vesting, granting, or assigning title to, an interest in, a security interest in, or an economic interest in the real property (and any improvements thereon) described as Square 454, Lots 41, 824, 838, 857, 877, 878; the portion of the public alley that reverted to (i) former Lot 820, (which is currently known as Lot 866), and (ii) former Lot 821 (which is currently known as Lot 867) pursuant to the Plat of Alley Closing filed with the Surveyor of the District of Columbia in Liber 17 at folio 74; and the portions of the public alley that will revert to Lots 41, 824, 838, 857, 877 and 878, all in Square 454, pursuant to the alley closing approved by the Closing of Public Alleys in Square 454 and Square 455, S.O. 98-194 Act of 1999, effective October 22, 1999 (D.C. Law 13-48; 46 DCR 6768);

(B) The amount of all taxes, fees, and deposits exempt, abated, or waived under this paragraph, § 2-1217.31(b), and §§ 47-902(17), 47-1002(26), and 47-2005(32) [§ 47-2005(30)], shall not exceed, in the aggregate, \$ 7 million;

(25)(A) Deeds conveying, vesting, granting, or assigning title to, an interest in, a security interest in, or an economic interest in the real property (and any improvements thereon) described as Square 299, Lot 831, in connection with debt or equity financing for the Mandarin Oriental Hotel Project until the Development Sponsor sells the Mandarin Oriental Hotel Project, as evidenced by the recordation of a deed conveying title to Square 299, Lot 831, at which time such amounts shall be due and payable without penalty or interest;

(B) The amount of all taxes, fees, and deposits deferred under this paragraph, and §§ 2-1217.32(b), 47-902(19), 47-1002(27), and 47-2005(34), shall not exceed, in the aggregate, \$4 million;

(C) For purposes of this paragraph, the term:

(i) "Development Sponsor" means Portals Hotel Site, LLC, a Delaware limited liability company, and its successors and assigns;

(ii) "Mandarin Oriental Hotel Project" means the acquisition and initial development, construction, equipping, and furnishing of a Mandarin Oriental hotel within the Portals project, located on Square 299, Lot 831, consisting of a 400-room hotel with approximately 33,000 square feet of associated meeting and banquet space, 2 restaurants, a health spa and fitness center totaling approximately 10,000 square feet, and approximately 90,000 square feet of public parking space for approximately 200 cars;

(iii) "Mandarin TIF Bonds" means the tax increment financing bonds issued in connection with the Mandarin Oriental Hotel Project pursuant to the Tax Increment Revenue Bonds Mandarin Hotel Project Emergency Approval Resolution of 2000, effective March 7, 2000 (Res. 13-510; 47 DCR 2133), and the Mandarin Hotel Project Modification Approval Resolution of 2000, effective December 19, 2000 (Res. 13-745; 48 DCR 83);

(D) This paragraph shall apply upon the closing of the sale of the Mandarin TIF Bonds;

(26) Deeds executed pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation;

(27) Deeds to an entity described in paragraph (3) of this section of a lease or ground rent for a term, including renewals, that is at least 30 years; provided, that if the entity were the owner of the real property in which the possessory interest is conveyed, the real property would have been entitled to exemption from real property taxation under D.C. Code § 47-1002; provided further, that, unless waived by regulation, a copy of a filed real property tax exemption application accompanies the deed at the time of its offer for recordation;

(28)(A) A deed to residential real property, without consideration for the transfer, to the trustee of a special needs trust established for the benefit of a trust beneficiary who has a disability, as defined in § 1614(a)(3) of the Social Security Act, approved October 30, 1972 (86 Stat. 1471; 42 U.S.C. § 1382c(a)(3)), or from the trustee of a special needs trust that, by its terms, terminates upon the death of the trust beneficiary with a disability.

(B) For the purposes of subparagraph (A) of this paragraph, a trust is a special needs trust if the trust instrument:

(i) States, among its purposes, that the trust assets are not intended to be counted in determining the beneficiary's eligibility for needs-based governmental benefits; and

(ii)(I) Names the beneficiary with a disability as the sole trust beneficiary during his or her lifetime; and

(II) Provides that the beneficiary with a disability shall not serve as trustee;

(29) Reserved;

(30) Beginning October 1, 2009, a security interest instrument pertaining to a cooperative housing association;

(31) Beginning October 1, 2009, a deed of economic interest pertaining to a limited-equity cooperative, as defined under D.C. Official Code § 47-802(11); and

(32) A deed to property that provides extremely low- or low-income housing that is exempt from property taxation pursuant to D.C. Code § 47-1005.02.

(Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302; June 24, 1980, D.C. Law 3-72, § 206, 27 DCR 2155; Sept. 13, 1980, D.C. Law 3-92, § 101(b), 27 DCR 3390; Mar. 10, 1982, D.C. Law 4-72, § 3(b), 28 DCR 5273; Oct. 8, 1983, D.C. Law 5-31, § 10(b), 30 DCR 3879; Mar. 16, 1989, D.C. Law 7-205, § 5, 36 DCR 457; Sept. 9, 1989, D.C. Law 8-20, § 2(b), 36 DCR 4564; Mar. 7, 1992, D.C. Law 9-56, § 3, 38 DCR 7281; June 11, 1992, D.C. Law 9-120, § 4(a), 39 DCR 3195; June 14, 1994, D.C. Law 10-128, § 101(b), 41 DCR 2096; Sept. 8, 1995, D.C. Law 11-38, § 4(b), 42 DCR 3269; June 3, 1997, D.C. Law 11-276, § 7(a), 44 DCR 1416; Apr. 3, 2001, D.C. Law 13-241, § 3, 48 DCR 610; June 9, 2001, D.C. Law 13-305, § 506(b), 48 DCR 334; Oct. 19, 2002, D.C. Law 14-213, § 26, 49 DCR 8140; Mar. 25, 2003, D.C. Law 14-232, § 3, 49 DCR 9764; Apr. 4, 2003,

D.C. Law 14-282, § 9(a), 50 DCR 896; Mar. 13, 2004, D.C. Law 15-105, § 73, 51 DCR 881; Sept. 8, 2004, D.C. Law 15-176, § 2, 51 DCR 5707; Apr. 5, 2005, D.C. Law 15-293, § 12, 52 DCR 1465; Oct. 20, 2005, D.C. Law 16-33, §§ 1212, 1296, 52 DCR 7503; Apr. 7, 2006, D.C. Law 16-91, § 114, 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 62, 53 DCR 6794; Apr. 24, 2007, D.C. Law 16-305, § 59, 53 DCR 6198; Mar. 20, 2008, D.C. Law 17-118, § 201, 55 DCR 1461; Sept. 12, 2008, D.C. Law 17-231, § 34, 55 DCR 6758; Dec. 13, 2011, D.C. Law 19-60, § 2, 58 DCR 9169.)

Cross references. — Exemptions for qualifying lower income homeownership households and cooperative housing associations, see § 47-3503.

Gallery Place Project tax and fee abatements, see § 2-1217.31.

Mandarin Oriental Hotel Project fee deferral, see § 2-1217.32.

Resident management corporations, deed tax exemptions, see § 47-3506.01.

Prior Codifications. — 1981 Ed., § 45-922. 1973 Ed., § 45-722.

Effect of amendments. — D.C. Law 13-241 added par. (24).

D.C. Law 13-305 rewrote par. (10) which had read:

“(10) Deeds of personal representatives of decedents, acting under the provisions of Title 20, transferring to a distributee without additional consideration real property of a decedent;”

D.C. Law 14-213, in par. (10), validated a previously made technical correction; and in par. (24)(B), substituted “47-2005(32)” for “47-2005(28)”.

D.C. Law 14-232 added par. (25).

D.C. Law 14-282 repealed par. (1); in par. (2), substituted “America, unless its taxation has been authorized by Congress,” for “America;”; rewrote par. (3); in par. (21), substituted “, as that class of property is established pursuant to § 47-813(c-4)” for “or Class 2 Property, as those classes of property are established pursuant to § 47-813,”; and added pars. (26) and (27).

D.C. Law 15-105, in pars. (20), (21), (22), (23), (24), (25), and (26), validated previously made technical corrections.

D.C. Law 15-176, in par. (7), substituted “parent and child, or domestic partners as defined in § 32-701(3)” for “or parent and child.”

D.C. Law 15-293, in par. (3), substituted “for recordation; provided further, that this exemption shall not apply to property which is exempt under § 47-1002(29);” for “for recordation;”.

D.C. Law 16-33, in par. (7), substituted “parent and child, grandparent and grandchild, or domestic partners,” for “or parent and child, or domestic partners;”; in par. (26), substituted a semicolon for “; and”; in par. (27), substituted “; and” for a period; and added par. (28).

D.C. Law 16-91, in pars. (26), (27), and (28), validated previously made technical corrections.

D.C. Law 16-191, in par. (3), validated a previously made technical correction.

D.C. Law 16-305, in par. (28), substituted “has a disability” for “is disabled”, “trust beneficiary with a disability” for “disabled trust beneficiary” and “beneficiary with a disability” for “disabled beneficiary”.

D.C. Law 17-118, in par. (3), inserted “or § 47-1002(30)”.

D.C. Law 17-231, in par. (7), substituted “spouses” for “husband and wife”.

D.C. Law 19-60 added par. (29).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6(b) of the Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

For temporary (225 day) amendment of section, see § 3 of the Mandarin Oriental Hotel Project Tax Deferral Temporary Act of 2002 (D.C. Law 14-143, May 21, 2002, law notification 49 DCR 5060).

For temporary (225 day) amendment of section, see § 10(a) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 10(a) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

For temporary (225 day) amendment of section, see § 2 of East of the River Hospital Revitalization Tax Exemption Temporary Amendment Act of 2007 (D.C. Law 17-76, January 23, 2008, law notification 55 DCR 1456).

For temporary (225 day) amendment of section, see §§ 2(a), 3(a) of Cooperative Housing Association Economic Interest Recordation Tax Temporary Amendment Act of 2009 (D.C. Law 18-109, March 3, 2010, law notification 57 DCR 2828).

Section 2(a) of D.C. Law 18-295 repealed par. (16) as of October 1, 2009; in par. (27), deleted “and”; in par. (28)(B)(ii)(II), substituted a semi-

colon for a period; and added pars. (29) and (30), which had read as follows:

“(29) Beginning October 1, 2009, a security interest instrument pertaining to a cooperative housing association; and

“(30) Beginning October 1, 2009, a deed of economic interest pertaining to a limited-equity cooperative, as defined under D.C. Official Code § 47-802(11).”.

Section 4(b) of D.C. Law 18-295 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 19-74 repealed par. (16) as of October 1, 2009; in par. (27), deleted “and” from the end; in par. (28)(B)(ii)(II), substituted a semicolon for a period; and added pars. (29) and (30) to read as follows:

“(29) Beginning October 1, 2009, a security interest instrument pertaining to a cooperative housing association; and

“(30) Beginning October 1, 2009, a deed of economic interest pertaining to a limited-equity cooperative, as defined under D.C. Official Code § 47-802(11).”.

Section 4(b) of D.C. Law 19-74 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(a) of the Correctional Treatment Facility Emergency Act of 1996 (D.C. Act 11-457, December 13, 1996, 44 DCR 156), and § 7(a) of the Correctional Treatment Facility Congressional Review Emergency Act of 1997 (D.C. Act 12-32, March 11, 1997, 44 DCR 1908).

For temporary (90 day) amendment of section, see § 3 of the Gallery Place Economic Development Emergency Amendment Act of 2000 (D.C. Act 13-500, January 5, 2001, 48 DCR 562).

For temporary (90 day) amendment of section, see § 6(b) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

For temporary (90 day) amendment of section, see § 3 of Mandarin Oriental Hotel Project Tax Deferral Emergency Act of 2001 (D.C. Act 14-227, January 8, 2002, 49 DCR 682).

For temporary (90 day) amendment of section, see § 3 of Mandarin Oriental Hotel Project Tax Deferral Second Congressional Review Emergency Act of 2002 (D.C. Act 14-563, December 23, 2002, 50 DCR 278).

For temporary (90 day) amendment of section, see §§ 3 and 5 of Mandarin Oriental Hotel Project Tax Deferral Congressional Review Emergency Act of 2002 (D.C. Act 14-345, April 24, 2002, 49 DCR 4300).

For temporary (90 day) amendment of section, see § 10(a) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 10(a) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 10(a) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

For temporary (90 day) amendment of section, see § 3 of Mandarin Oriental Hotel Project Tax Deferral Congressional Review Emergency Act of 2003 (D.C. Act 15-36, March 24, 2003, 50 DCR 2764).

For temporary (90 day) amendment of section, see §§ 1212, 1296, 1298, 1299 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 6 of Finance and Revenue Technical Amendments Second Emergency Amendment Act of 2006 (D.C. Act 16-585, December 28, 2006, 54 DCR 340).

For temporary (90 day) amendment of section, see § 2 of East of the River Hospital Revitalization Tax Exemption Emergency Amendment Act of 2007 (D.C. Act 17-174, November 2, 2007, 54 DCR 11216).

For temporary (90 day) amendment of section, see § 201 of Arthur Capper/Carrollsborg Public Improvement Revenue Bonds Technical Correction Emergency Act of 2008 (D.C. Act 17-318, March 19, 2008, 55 DCR 3418).

For temporary (90 day) amendment of section, see §§ 2(a), 3(a) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2009 (D.C. Act 18-234, November 20, 2009, 56 DCR 9046).

For temporary (90 day) amendment of section, see § 2(a) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2010 (D.C. Act 18-570, October 20, 2010, 57 DCR 10084).

For temporary (90 day) amendment of section, see § 2(a) of Cooperative Housing Association Economic Interest Recordation Tax Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-12, February 11, 2011, 58 DCR 1433).

For temporary (90 day) amendment of section, see § 2(a) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2011 (D.C. Act 19-194, October 18, 2011, 58 DCR 9160).

For temporary (90 day) amendment of section, see § 7102(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 7102(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act

of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 3-72. — Law 3-72, the “District of Columbia Probate Reform Act of 1980,” was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-92. — For legislative history of D.C. Law 3-92, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 4-72. — For legislative history of D.C. Law 4-72, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 5-31. — Law 5-31, the “Lower Income Homeownership Tax Abatement and Incentives Act of 1983,” was introduced in Council and assigned Bill No. 5-167, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1983 and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-205. — Law 7-205, the “Cooperative Housing Assessment Procedure and Lower Income Homeownership Tax Abatement and Incentives Act of 1983 Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-548, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-276 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-20. — For legislative history of D.C. Law 8-20, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 9-56. — Law 9-56, the “Revocable Trust Tax Exemption Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-53, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-99 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-120. — Law 9-120, the “Public Housing Homeownership Tax Abatement Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-356, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 3, 1992, and April 7,

1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-194 and transmitted to both Houses of Congress for its review. D.C. Law 9-120 became effective on June 11, 1992.

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Legislative history of Law 11-38. — Law 11-38, the “Limited Liability Company Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-75, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-71 and transmitted to both Houses of Congress for its review. D.C. Law 11-38 became effective on September 8, 1995.

Legislative history of Law 11-276. — Law 11-276, the “Correction Treatment Facility Act of 1996,” was introduced in Council and assigned Bill No. 11-908, which was referred to the Committee on the Judiciary and the Committee of the Whole. The Bill was adopted on first and second readings on December 3, 1996, and December 17, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-523 and transmitted to both Houses of Congress for its review. D.C. Law 11-276 became effective on June 3, 1997.

Legislative history of Law 13-241. — Law 13-241, the “Gallery Place Economic Development Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-877, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-519 and transmitted to both Houses of Congress for its review. D.C. Law 13-241 became effective on April 3, 2001.

Legislative history of Law 13-305. — For Law 13-305, see notes following § 42-1101.

Legislative history of Law 14-213. — Law 14-213, the “Technical Amendments Act of 2002,” was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 14-232. — Law 14-232, the “Mandarin Oriental Hotel Project Tax Deferral Act of 2002,” was introduced in Council and assigned Bill No. 14-466, which was referred to the Committee on Finance and

Revenue. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on October 23, 2002, it was assigned Act No. 14-489 and transmitted to both Houses of Congress for its review. D.C. Law 14-232 became effective on March 25, 2003.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

Legislative history of Law 15-176. — Law 15-176, the “Deed Recordation Tax and Related Amendments Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-462, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 6, 2004, and May 4, 2004, respectively. Signed by the Mayor on May 21, 2004, it was assigned Act No. 15-426 and transmitted to both Houses of Congress for its review. D.C. Law 15-176 became effective on September 8, 2004.

Legislative history of Law 15-293. — For Law 15-293, see notes following § 42-902.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 42-3405.10a.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 17-118. — Law 17-118, the “Arthur Capper/Carrollsbury Public Improvements Revenue Bonds Approval Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-292 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act

No. 17-262 and transmitted to both Houses of Congress for its review. D.C. Law 17-118 became effective on March 20, 2008.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

Legislative history of Law 19-60. — Law 19-60, the “New Issue Bond Program Tax Exemption Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-20, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 18, 2011, it was assigned Act No. 19-198 and transmitted to both Houses of Congress for its review. D.C. Law 19-60 became effective on December 13, 2011.

Short title. — Short title of subtitle Z of title I of Law 16-33: Section 1211 of D.C. Law 16-33 provided that subtitle Z of title I of the act may be cited as the Family Property Recordation and Transfer Tax Exemption Act of 2005.

Short title of subtitle KK of title I of Law 16-33: Section 1295 of D.C. Law 16-33 provided that subtitle KK of title I of the act may be cited as the Disabled Property Owners Tax Reduction Act of 2005.

Effective date. — Section 5 of Law 14-232 provided that this act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Editor’s notes. — Applicability and expiration of subtitle KK of title I, §§ 1295 to 1300, of D.C. Law 16-33: Sections 1298 and 1299, as amended by D.C. Law 17-219, § 7068(l), (m) provided:

“Sec. 1298. Conditional applicability.

“(a) Sections 1296 and 1297 shall apply for taxable years beginning after September 30, 2005.

“(b) Repealed.

“Sec. 1299. Repealed.”

Section 3 of D.C. Law 19-60 provided: “Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

Application of Law 8-20: See Historical and Statutory Notes following § 42-1101.

Mayor authorized to issue rules: Section 6 of D.C. Law 9-56 provided that the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of the act.

Section 5 of D.C. Law 9-120 provided that the Mayor may, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of the act.

Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

Applicability of D.C. Law 15-176: Section 7 of D.C. Law 15-176 provided: “Sections 2 through 6 shall apply as of October 1, 2003.”

CASE NOTES

In general.

Precept of strict construction of tax exempt provisions has vitality for doubtful cases but may not be properly used to defeat purpose of legislature. *District of Columbia v. Orleans*, 406 F.2d 957, 1968 U.S. App. LEXIS 4921 (C.A.D.C. 1968).

District of Columbia deed recordation tax exemption provided for deeds between parent and child made without consideration applies to conveyance of real property made by parents to trustees under a trust they established for benefit of their children. D.C. Code § 45-722. *District of Columbia v. Orleans*, 406 F.2d 957, 1968 U.S. App. LEXIS 4921 (C.A.D.C. 1968).

Fact that children might die prior to termination of trust involving deed for benefit of children and property would go to heirs of child rather than donors' children would not prevent exemption from District of Columbia deed recordation tax in absence of regulation or administrative policy formulating approach to definition and valuation that would be involved in taxation of contingent interests. D.C. Code § 45-722. *District of Columbia v. Orleans*, 406 F.2d 957, 1968 U.S. App. LEXIS 4921 (C.A.D.C. 1968).

Recording of partner's deed to partnership property represented a transfer of property

from one legal entity to another, so as to be subject to deed recordation tax, despite fact that such partner, to whom all partnership interests of the other partners had been assigned, was the participant on both sides of the deed transaction, that partnership had dissolved and that partner gave no consideration for the property. D.C. Code 1981, §§ 41-129, 45-922(6), 45-924. *Cowan v. District of Columbia Dep't of Finance & Revenue*, 454 A.2d 814, 1983 D.C. App. LEXIS 290 (1983).

Deeds whereby taxpayer, a limited partnership, received all right, title and interest of an unincorporated business trust and various parcels of real property in the District of Columbia and, in return, transferred interests in the partnership to the trust did not merely "confirm, correct, modify or supplement a deed previously recorded" so as to qualify for statutory exemption from deed recordation tax, but represented a conveyance or transfer of real property for consideration between distinct legal entities and, as such, amounted to a transaction which was subject to deed recordation tax. D.C. Code 1973, §§ 45-722, subd. 6, 45-723. *Columbia Realty Venture v. District of Columbia*, 433 A.2d 1075, 1981 D.C. App. LEXIS 325 (1981).

§ 42-1102.01. Sales or assignments of instruments on secondary market exempt from tax.

A sale or assignment of a note, mortgage, deed of trust, or other instrument from one lender to another, on the secondary market, where there are no changes in the terms or conditions provided in the instrument and the borrower has taken no action to refinance, shall be exempt from the tax imposed by this chapter.

(Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302a, as added June 14, 1994, D.C. Law 10-128, § 101(c), 41 DCR 2096.)

Prior Codifications. — 1981 Ed., § 45-922.1.

Legislative history of Law 10-128. — Law 10-128, the "Omnibus Budget Support Act of 1994," was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994,

and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act No. 10-225 and transmitted to both Houses of Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

Editor's notes. — Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

§ 42-1102.02. Transfer of economic interest defined.

(a) A transfer of an economic interest in real property occurs upon the conveyance, vesting, granting, bargaining, sale, or assignment, directly or indirectly, of a controlling interest by 1 or more persons or by 1 or more

transactions, within any 12-month period, in any corporation, partnership, association, trust, or other entity that, during the 12-month period immediately preceding the transfer of an economic interest in real property:

(1) Derives more than 50% of its gross receipts from the ownership or disposition of real property in the District; or

(2) Holds real property in the District that has a value comprising 80% or more of the value of its entire tangible asset holdings.

(b) For the purposes of subsection (a) of this section, a transfer of a controlling interest includes the aggregate of the transfer of any legal, equitable, beneficial, or other ownership interest in:

(1) Any entity described in subsection (a) of this section;

(2) Any entity that is a partner in, shareholder in, or beneficiary of, an entity described in subsection (a) of this section; and

(3) Any other entity:

(A) That derives, directly or indirectly, any portion of its receipts from the ownership of any entity described in subsection (a) of this section; or

(B) Has asset value that includes, directly or indirectly, any legal, equitable, beneficial, or other ownership interest in any entity described in subsection (a) of this section.

(c) Notwithstanding any other provision of this chapter, a transfer of shares in a cooperative housing association in connection with the grant, transfer, or assignment of a proprietary leasehold or other proprietary interest, in whole or in part, shall be a transfer of an economic interest.

(Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302b, as added June 14, 1994, D.C. Law 10-128, § 101(d), 41 DCR 2096; Mar. 3, 2010, D.C. Law 18-111, § 7091(a), 57 DCR 181.)

Section references. — This section is referred to in § 42-1101.

Prior Codifications. — 1981 Ed., § 45-922.2.

Effect of amendments. — D.C. Law 18-111 added subsec. (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see §§ 2(b), 3(b) of Cooperative Housing Association Economic Interest Recordation Tax Temporary Amendment Act of 2009 (D.C. Law 18-109, March 3, 2010, law notification 57 DCR 2828).

Section 2(b) of D.C. Law 18-295 amended subsec. (c) to read as follows:

“(c) Notwithstanding any other provision of this section, every transfer of an interest in a cooperative housing association in connection with the grant, transfer, or assignment of proprietary leasehold or other proprietary interest, in whole or in part, shall be a transfer of an economic interest. This subsection shall apply as of October 1, 2009.”

Section 4(b) of D.C. Law 18-295 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 19-74 rewrote subsec. (c) to read as follows:

“(c) Notwithstanding any other provision of this section, every transfer of an interest in a cooperative housing association in connection with the grant, transfer, or assignment of proprietary leasehold or other proprietary interest, in whole or in part, shall be a transfer of an economic interest. This subsection shall apply as of October 1, 2009.”

Section 4(b) of D.C. Law 19-74 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of section, see § 101(d) of the Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-224, April 14, 1994, 41 DCR 2079).

For temporary repeal of the Omnibus Budget Support Emergency Act of 1994, see § 801 of the Second Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-226, April 14, 1994, 41 DCR 2113).

For temporary addition of section, see § 101(d) of the Second Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-226, April 14, 1994, 41 DCR 2113).

For temporary (90 day) amendment of section, see § 7041 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 7091(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 2(c), 3(c) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2009 (D.C. Act 18-234, November 20, 2009, 56 DCR 9046).

For temporary (90 day) amendment of section, see § 7091(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2(b) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2010 (D.C. Act 18-570, October 20, 2010, 57 DCR 10084).

For temporary (90 day) amendment of section, see § 2(b) of Cooperative Housing Association Economic Interest Recordation Tax Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-12, February 11, 2011, 58 DCR 1433).

For temporary (90 day) amendment of section, see § 2(b) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2011 (D.C. Act 19-194, October 18, 2011, 58 DCR 9160).

For temporary (90 day) amendment of section, see § 7102(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 7102(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 7090 of D.C. Law 18-111 provided that subtitle G of title VII of the act may be cited as the “Economic Interests in Real Property Clarification Amendment Act of 2009”.

Editor’s notes. — Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

§ 42-1103. Imposition of tax; rate; return; contents; liability for tax; extension of period for filing, and waiver of, return.

(a)(1) At the time a deed, including a lease or ground rent for a term (with renewals) that is at least 30 years, is submitted for recordation, it shall be taxed at the rate of 1.1%, as follows:

(A) A deed that conveys title to real property in the District shall be taxed at a rate of 1.1% applied to the consideration for the deed; provided, that if there is no consideration for a transfer or if the consideration for the transfer is nominal, the rate shall be applied to the fair market value of the real property, as determined by the Mayor.

(B)(i) If there is a lease or ground rent for a term (with renewals) that is at least 30 years, the recordation tax shall be based upon the average annual rent over the term of the lease, including renewals, capitalized at a rate of 10%, plus any additional consideration payable; provided that the amount to which the rate is applied shall not exceed the fair market value of the real property covered by the interest transferred.

(ii) If the average annual rent of the lease or ground rent for a term (including renewals) that is at least 30 years cannot be determined, the recordation tax will be based on the greater of:

(I) One hundred and five percent of the minimum average annual rent ascertainable from the terms of the lease, capitalized at a rate of 10%, plus any additional consideration payable; or

(II) One hundred and fifty percent of the assessed value of the real property covered by the interest transferred.

(2) Notwithstanding paragraph (1) of this subsection, at the time it is submitted for recordation, a deed that evidences a transfer of an economic interest in real property shall be taxed at the rate of 2.9% of the consideration allocable to the real property; provided, that, beginning October 1, 2009, in the case of a transfer of an economic interest in a cooperative housing association that is in connection with a grant, transfer, or assignment of a proprietary leasehold or other proprietary interest where the consideration allocable to the real property is less than \$400,000, the rate of tax shall be 2.2%.

(3)(A) Notwithstanding paragraph (1) of this subsection, at the time a security interest instrument is submitted for recordation, it shall be taxed at a rate of 1.1% (to complete the calculation of total recordation tax due at time of recording, see also additional tax in subsection (a-4) of this section) of the total amount of debt incurred that is secured by the interest in real property; provided, that if the existing debt is refinanced, the rate shall be applied only to the principal amount of the new debt in excess of the principal balance due on the existing debt to the extent that such existing debt (including any prior debt that was previously refinanced by the existing debt) was:

(i) Previously taxable under this paragraph and the tax thereon was timely and properly paid; or

(ii) Exempt under § 42-1102 or not otherwise taxable, including purchase money mortgages described in § 42-1102(5).

(3)(B) Any amendment, modification, or restatement of a security interest instrument shall be deemed a refinance of the entire aggregate debt owed, unless the amendment, modification, or restatement is a supplemental deed. With such a deemed refinance, the rate in subparagraph (A) of this paragraph shall be applied only to the principal amount of the modified debt (including amounts paid to the borrower on the existing security interest instrument during the preceding 12 months) in excess of the principal balance due on the existing debt (before any such payment) to the extent that the existing debt (including any prior debt that was previously refinanced by the existing debt) was:

(i) Previously taxable under this paragraph and the tax thereon was timely and properly paid; or

(ii) Exempt under § 42-1102 or not otherwise taxable, including purchase money mortgages described in § 42-1102(5).

(4) Security interest instruments that qualify for exemption under § 42-1102 shall be exempt from the recordation tax.

(a-1) Repealed.

(a-2) Repealed.

(a-3) Repealed.

(a-4) Beginning October 1, 2006, except for residential properties transferred for a consideration less than \$400,000, an additional tax of .35% is

imposed upon a deed that is subject to the tax under subsection (a)(1) of this section. Of the funds collected under this subsection, 15% shall be deposited in the Housing Production Trust Fund established by § 42-2802, and the remainder shall be deposited in the General Fund of the District of Columbia.

(b)(1) Each such deed shall be accompanied by a return in such form as the Mayor may prescribe, executed by all parties to the deed, setting forth the consideration for the deed or debt secured by the deed, and such other information as the Mayor may require.

(2) The return shall be an integral part of the deed when prescribed and as required by regulation.

(3)(A) Notwithstanding paragraph (1) of this subsection, at the time a security interest instrument is submitted for recordation, it shall be taxed at a rate of 1.1% (to complete the calculation of total recordation tax due at time of recording, see also additional tax in subsection (a-4) of this section) of the total amount of debt incurred that is secured by the interest in real property; provided, that if the existing debt is refinanced, the rate shall be applied only to the principal amount of the new debt in excess of the principal balance due on the existing debt to the extent that such existing debt (including any prior debt that was previously refinanced by the existing debt) was:

(i) Previously taxable under this paragraph and the tax thereon was timely and properly paid; or

(ii) Exempt under § 42-1102 or not otherwise taxable, including purchase money mortgages described in § 42-1102(5).

(B) Any amendment, modification, or restatement of a security interest instrument shall be deemed a refinance of the entire aggregate debt owed, unless the amendment, modification, or restatement is a supplemental deed. With such a deemed refinance, the rate in subparagraph (A) of this paragraph shall be applied only to the principal amount of the modified debt (including amounts paid to the borrower on the existing security interest instrument during the preceding 12 months) in excess of the principal balance due on the existing debt (before any such payment) to the extent that the existing debt (including any prior debt that was previously refinanced by the existing debt) was:

(i) Previously taxable under this paragraph and the tax thereon was timely and properly paid; or

(ii) Exempt under § 42-1102 or not otherwise taxable, including purchase money mortgages described in § 42-1102(5).

(b-1)(1) A purchase money mortgage or purchase money deed of trust shall:

(A) Be fully executed within 30 days of the date that the deed conveying title to the real property to the purchaser is fully executed; and

(B) Be recorded within 30 days after the date that the deed conveying title to the purchaser of the real property is duly recorded.

(2) A purchase money mortgage or purchase money deed of trust submitted to the Mayor for recordation shall:

(A) Be executed by the purchaser of the real property as part of a series of transactions conveying title to real property to the purchaser;

(B) Reference the deed conveying title to the purchaser of the real property by date and instrument number;

(C) Recite on the face of the document that it is a purchase money mortgage or purchase money deed of trust; and

(D) Recite on the face of the document the amount of purchase money that it secures.

(c) The parties to a deed which is submitted to the Mayor for recordation shall be jointly and severally liable for payment of the taxes imposed by this section; provided, that neither the United States nor the District of Columbia shall be jointly and severally liable with the transferee; provided further, that, beginning October 1, 2009, in the case of a deed that evidences a transfer of an economic interest in a cooperative housing association, the cooperative housing association shall be jointly and severally liable with the parties to the deed for the payment of taxes imposed by this section regardless of whether the cooperative housing association itself is a party to the deed.

(d) The deed and accompanying return shall be due as prescribed in § 47-1431(a) for the recordation of a deed; provided, that if the deed and return are submitted to the Recorder of Deeds before the due date, the return shall be due and taxes shall be due and owing at the time of submission.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 303; Oct. 21, 1975, D.C. Law 1-23, title II, § 203, 22 DCR 2097; July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765; Sept. 13, 1980, D.C. Law 3-92, § 101(c), 27 DCR 3390; July 25, 1989, D.C. Law 8-17, § 8(a), 36 DCR 4160; Sept. 9, 1989, D.C. Law 8-20, § 2(c), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(e), 41 DCR 2096; April 9, 1997, D.C. Law 11-198, title I, § 101, 43 DCR 4569; April 9, 1997, D.C. Law 11-255, § 59, 44 DCR 1271; June 9, 2001, D.C. Law 13-305, § 506(c), 48 DCR 334; Oct. 26, 2001, D.C. Law 14-42, § 9, 48 DCR 7612; Apr. 4, 2003, D.C. Law 14-282, § 9(b), 50 DCR 896; June 5, 2003, D.C. Law 14-307, § 1102, 49 DCR 11664; Dec. 7, 2004, D.C. Law 15-205, § 1232, 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, §§ 61, 94, 52 DCR 2638; D.C. Law 16-123, § 161(a), 53 DCR 2843; Mar. 2, 2007, D.C. Law 16-192, §§ 1132(b), 2053, June 8, 2006, 53 DCR 6899; Mar. 14, 2007, D.C. Law 16-294, § 12, 54 DCR 1086; Aug. 16, 2006, D.C. Law 17-219, §§ 2003(a), 7110, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, §§ 135, 170(b), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 7091(b), 57 DCR 181.)

Cross references. — Conservation easements, creation, alteration and validity, see § 42-202.

Deed recordation tax defined, see § 47-1401.

Partnership conversion to a limited liability company, recordation tax, see § 29-1013.

Prior Codifications. — 1981 Ed., § 45-923. 1973 Ed., § 45-723.

Effect of amendments. — D.C. Law 13-305, in subsec. (a), rewrote pars. (1) and (3) which had read:

“(a)(1) At the time it is submitted for recordation, a deed that conveys title to real property in the District shall be taxed at a rate of 1.1% of the total consideration for the deed.”

“(3) At the time it is submitted for recordation, a security interest instrument shall be

taxed at a rate of 1.1% of the total amount of debt incurred which is secured by the interest in real property. However, when existing debt is refinanced, the recordation tax shall only apply to the amount of any new debt incurred over and above the amount of the principal balance due on existing debt if the existing debt was a purchase money mortgage or purchase money deed of trust or subject to taxation under this paragraph.”

D.C. Law 14-42, in subsec. (a)(1)(B)(i), substituted “based upon the average annual rent over the term of the lease, including renewals, capitalized at a rate of 10%” for “based on the capitalization of 10% of the average annual rent over the term of the lease, including renewals”.

D.C. Law 14-282 rewrote subs. (b) and (d); and in subsec. (c), substituted "jointly and severally liable with the transferee" for "subject to such liability".

D.C. Law 14-307, in subsec. (a), substituted "1.5" for "1.1" in par. (1) and subpar. (1)(A), substituted "deed, including a lease" for "dead or a lease" in par. (1), deleted "total" from subpar. (1)(A), rewrote pars. (2) and (3); and added subsec. (a-2).

D.C. Law 15-205, in subsec. (a), substituted "1.1%" for "1.5%" in par. (1), substituted "2.2%" for "3.0%" in par. (2), and substituted "1.1%" for "1.5%" in par. (3); and repealed subsec. (a-2) which had read:

"(a-2) Notwithstanding the provisions of subsection (a)(1) of this section, the rate of tax under subsection (a)(1) of this section shall be 1.1% if:

"(1) The consideration of the deed does not exceed \$250,000; and

"(2) The real property qualifies as a homestead as defined by § 47-849(2), the application for the homestead deduction accompanies the deed, and the deed is recorded timely as provided by § 47-1431(a)."

D.C. Law 15-354, in subs. (a)(1) and (b), validated previously made corrections.

D.C. Law 16-123 added subsec. (a-3).

D.C. Law 16-192 repealed subsec. (a-3) as added by D.C. Law 16-123 and added a new subsec. (a-4). Subsec. (a-3) as added by D.C. Law 16-123 read as follows: "(a-3) Beginning for fiscal year 2008, if the amount of revenue necessary to fund Chapter 29B of Title 38, in accordance with § 38-2972.01(a)(1) and (2) thereof is not sufficient, the tax imposed on commercial property by subsection (a) of this section shall be increased to rates, as determined annually by the Chief Financial Officer, rounded to the highest increment of 0.1%, sufficient to raise revenue in an amount needed to satisfy the deficiency in the fiscal year, subject to Council approval. After publishing the August revised revenue estimates and prior to September 1 of each year, the Chief Financial Officer shall determine the rates and publish a notice in the District of Columbia Register and on the website of the Office of the Chief Financial Officer stating the amount of the rates. The rates as determined by Chief Financial Officer shall be effective as of October 1 of the following fiscal year."

D.C. Law 16-294, in subsec. (a-4), substituted "(a)(1) or (3)" for "(a)(1)".

D.C. Law 17-219, in subsec. (a)(2), substituted "rate of 2.9%" for "rate of 2.2%"; and rewrote subsec. (a-4), which had read as follows: "(a-4) Beginning October 1, 2006, except for residential properties transferred for a consideration less than \$400,000, an additional tax of .35% is imposed upon a deed that is subject to the tax under subsection (a)(1) or (3) of this

section. An amount equal to 39.93% of the funds collected under this subsection shall be deposited in the Mayor's Comprehensive Housing Task Force Fund established by § 42-2855.01, 15% of the funds collected shall be deposited in the Housing Production Trust Fund established by § 42-2802, and the balance shall be deposited in the General Fund of the District of Columbia."

D.C. Law 17-353 validated a previously made technical correction in the designation of subsec. (a-4).

D.C. Law 18-111, in subsec. (a)(2), substituted "to the real property; provided, that in the case of a transfer of shares in a cooperative housing association that is in connection with a grant, transfer, or assignment of a proprietary leasehold or other proprietary interest, in whole or in part, where the consideration allocable to the real property is less than \$400,000, the rate of tax shall be 2.2%" for "to the real property".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Fiscal Year 1997 Budget Support Temporary Amendment Act of 1997, (D.C. Law 12-4, May 23, 1997, law notification 44 DCR 3718).

For temporary (225 day) amendment of section, see § 6(c) of the Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

For temporary (225 day) amendment of section, see § 10(b) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 10(b) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

For temporary (225 day) amendment of section, see §§ 2, 3 of Deed Transfer and Recordation Clarification Temporary Amendment Act of 2006 (D.C. Law 16-206, March 2, 2007, law notification 54 DCR 2504).

For temporary (225 day) amendment of section, see §§ 2(c), 3(c) of Cooperative Housing Association Economic Interest Recordation Tax Temporary Amendment Act of 2009 (D.C. Law 18-109, March 3, 2010, law notification 57 DCR 2828).

Section 2(c) of D.C. Law 18-295, in subsec. (a)(2), substituted "provided, that, beginning October 1, 2009, in the case of a transfer of an economic interest" for "provided, that in the case of a transfer of shares" and deleted ", in whole or in part,"; and, in subsec. (c), substituted "; provided further, that, beginning October 1, 2009, in the case of a deed that evidences a transfer of an economic interest in a cooper-

ative housing association, the cooperative housing association shall be jointly and severally liable with the parties to the deed for the payment of taxes imposed by this section regardless of whether the cooperative housing association itself is a party to the deed." for a period.

Section 4(b) of D.C. Law 18-295 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 19-74, in subsec. (a)(2), substituted "provided, that, beginning October 1, 2009, in the case of a transfer of an economic interest" for "provided, that in the case of a transfer of shares", and deleted ", in whole or in part,"; and, in subsec. (c), substituted "; provided further, that, beginning October 1, 2009, in the case of a deed that evidences a transfer of an economic interest in a cooperative housing association, the cooperative housing association shall be jointly and severally liable with the parties to the deed for the payment of taxes imposed by this section regardless of whether the cooperative housing association itself is a party to the deed. for the period at the end.

Section 4(b) of D.C. Law 19-74 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary repeal of § 101 of D.C. Law 11-198, see § 2 of the Recordation and Transfer Tax Clarification Emergency Amendment Act of 1996 (D.C. Act 11-402, October 24, 1996, 43 DCR 5806), and see § 2(a) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1997 (D.C. Act 12-37, March 18, 1997, 44 DCR 1935).

For temporary amendment of section, see § 101 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181).

For temporary amendment of section, see § 101 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181).

For temporary repeal of § 101 of D.C. Act 11-302, see § 3 of the Recordation and Transfer Tax Clarification Emergency Amendment Act of 1996 (D.C. Act 11-402, October 24, 1996, 43 DCR 5806).

For temporary (90 day) amendment of section, see § 6(c) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

For temporary (90 day) amendment of section, see § 9 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 10(b) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 10(b) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 10(b) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

For temporary (90 day) amendment of section, see §§ 1102 and 1104 of Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see §§ 1102 and 1104 of Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1102 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 1232 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1232 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of sections, see §§ 1132(b), 2053 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see §§ 2, 3 of Deed Transfer and Recordation Clarification Emergency Amendment Act of 2006 (D.C. Act 16-481, October 5, 2006, 53 DCR 8379).

For temporary (90 day) amendment of section, see §§ 1132(b), 2053 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Deed Transfer and Recordation Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-568, December 19, 2006, 54 DCR 3).

For temporary (90 day) amendment of section, see §§ 1132(b), 2053 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 7091(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 2(c), 3(c) of Cooperative Housing

Association Economic Interest Recordation Tax Emergency Amendment Act of 2009 (D.C. Act 18-234, November 20, 2009, 56 DCR 9046).

For temporary (90 day) amendment of section, see § 7091(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2(c) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2010 (D.C. Act 18-570, October 20, 2010, 57 DCR 10084).

For temporary (90 day) amendment of section, see § 2(c) of Cooperative Housing Association Economic Interest Recordation Tax Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-12, February 11, 2011, 58 DCR 1433).

For temporary (90 day) amendment of section, see § 2(c) of Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2011 (D.C. Act 19-194, October 18, 2011, 58 DCR 9160).

For temporary (90 day) amendment of section, see § 7102(c) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 7122 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 7102(c) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) amendment of section, see § 7122 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 1-23. — Law 1-23, the “Revenue Act of 1975,” was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-91. — Law 2-91, the “Residential Real Property Transfer Excise Tax Act of 1978,” was introduced in Council and assigned Bill No. 2-101, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, second amended first, and second readings on February 21, 1978, March 7, 1978, March 21, 1978 and April 4, 1978, respec-

tively. Signed by the Mayor on April 27, 1978, it was assigned Act No. 2-189 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-92. — For legislative history of D.C. Law 3-92, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 8-17. — Law 8-17, the “Revenue Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-224, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 2, 1989 and May 16, 1989, respectively. Signed by the Mayor on May 26, 1989, it was assigned Act No. 8-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-20. — For legislative history of D.C. Law 8-20, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 13-305. — For Law 13-305, see notes following § 42-1101.

Legislative history of Law 14-8. — For D.C. Law 14-8, see notes following § 42-1101.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 42-844.06.

Legislative history of Law 14-191. — For Law 14-191, see notes following § 42-405.

Legislative history of Law 14-228. — For Law 14-228, see notes following § 42-204.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second read-

ings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-123. — Law 16-123, the “School Modernization Financing Act of 2006”, was introduced in Council and assigned Bill No. 16-250 which was referred to the Committees on Education, Libraries, and Recreation and Revenue and Finance. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 30, 2006, it was assigned Act No. 16-341 and transmitted to both Houses of Congress for its review. D.C. Law 16-123 became effective on June 8, 2006.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 16-294. — Law 16-294, the “Second Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned

Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Short title. — Short title of subtitle V of title I of Law 15-205: Section 1231 of D.C. Law 15-205 provided that subtitle V of title I of the act may be cited as Recordation and Transfer Tax Reduction Act of 2004.

Short title: Section 7109 of D.C. Law 17-219 provided that subtitle M of title VII of the act may be cited as the “Economic Interests Tax Amendment Act of 2008”.

Delegation of Authority. — Delegation of authority under D.C. Act 8-42, the “District of Columbia Recordation of Economic Interests in Real Property Tax Amendment Act of 1989”, see Mayor’s Order 89-205, September 11, 1989.

Editor’s notes. — Application of Law 8-20: See Historical and Statutory Notes following § 42-1101.

Application of 8-17: Section 12 of D.C. Law 8-17 provided that §§ 2(a), (b) and (c) and 3 shall apply to all taxable years beginning after December 31, 1988. Section 2(d) and (e) shall apply to all taxable periods beginning after September 30, 1989. All other sections of the act shall apply as of July 1, 1989.

Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

Exemption from taxation for conversion of a partnership to a limited liability company: Section 3 of D.C. Law 11-38 provided that § 2 of the act shall apply as of July 23, 1994.

Application of Law 11-198: Section 1001 of D.C. Law 11-198 provided that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Application of Law 14-307: Section 1104 of D.C. Law 14-307 provided: “Sections 1102 and 1003 shall apply as of January 1, 2003.”

Section 401 of D.C. Law 16-123 provided: “Sec. 401. Sunset. If, pursuant to section 141(a)(1), there are unallocated local revenues, from existing revenue sources, sufficient to fund Title I, then section 141(a)(2) and (3), and section 161 shall sunset.”

Section 7111 of D.C. Law 17-219 provided that this subtitle shall apply as of October 1, 2008.

Exemption from taxation for conversion of a partnership to a limited liability company: For exemption from the recordation tax imposed by this section in connections with the conversion

of a partnership to a limited liability company, see § 29-1013(k) as added by § 2(d) of D.C. Law 11-38.

CASE NOTES

ANALYSIS

Persons responsible for payment of tax.
Taxable transfers.

Persons responsible for payment of tax.

Vendors breached contract for sale of real property by refusing to pay transfer tax imposed by District of Columbia after making of contract and before final closing and transfer of property. D.C. Code 1973, § 47-903. McCulloch Development Corp. v. Winkler, 531 F. Supp. 83, 1982 U.S. Dist. LEXIS 10539 (1982).

Fact that purchaser contracted to pay all examination of title, tax certificate, conveyancing, notary fees, deed recordation tax, all settlement charges and all recording charges in contract for purchase of real estate did not mean that purchaser voluntarily shouldered transfer tax burden which was imposed by District of Columbia after making of contract and before final closing and transfer of property. D.C. Code 1973, § 47-903. McCulloch Development Corp. v. Winkler, 531 F. Supp. 83, 1982 U.S. Dist. LEXIS 10539 (1982).

Any ambiguity in contract for purchase of real estate in connection with which party was responsible for payment of transfer tax imposed by District of Columbia after making of contract and before final closing and transfer of contract was construed against vendors where vendors drafted contract. McCulloch Develop-

ment Corp. v. Winkler, 531 F. Supp. 83, 1982 U.S. Dist. LEXIS 10539 (1982).

Where vendors breached contract for sale of real property by refusing to pay transfer tax imposed by District of Columbia after making of contract and before final closing and transfer of property, and purchaser voluntarily paid tax, that payment was response to breach of contract by vendors, not offer of settlement, and, therefore, vendors could not claim accord and satisfaction. McCulloch Development Corp. v. Winkler, 531 F. Supp. 83, 1982 U.S. Dist. LEXIS 10539 (1982).

Taxable transfers.

Deeds whereby taxpayer, a limited partnership, received all right, title and interest of an unincorporated business trust and various parcels of real property in the District of Columbia and, in return, transferred interests in the partnership to the trust did not merely "confirm, correct, modify or supplement a deed previously recorded" so as to qualify for statutory exemption from deed recordation tax, but represented a conveyance or transfer of real property for consideration between distinct legal entities and, as such, amounted to a transaction which was subject to deed recordation tax. D.C. Code 1973, §§ 45-722, subd. 6, 45-723. Columbia Realty Venture v. District of Columbia, 433 A.2d 1075, 1981 D.C. App. LEXIS 325 (1981).

§ 42-1104. Computation of tax where absence of or no consideration; when fair market value to be shown on return; consideration on deeds of trust or mortgages.

(a) Consideration for a deed conveying title to real property or transferring an economic interest in real property, for purposes of the tax imposed by § 42-1103(a) and (b), including any mortgages, liens, or encumbrances thereon, shall be the amount required to be paid or provided in exchange for the execution and delivery of the deed. Where no price or amount is paid or required to be paid for the real property or for the transfer of an economic interest in real property or where the price is nominal, the consideration for the deed shall, for purposes of the tax imposed by § 42-1103(a) and (b), be the fair market value of the real property, and the tax shall be based upon the fair market value.

(b) On a deed conveying a security interest in real property, the principal amount of debt that the deed secures, for the purposes of the tax imposed by

§ 42-1103(c), shall be the principal amount of the debt recited on the face of the deed unless, from other information available to the Mayor, the Mayor determines that the principal amount of debt is a higher amount.

(c) Whenever, in the opinion of the Mayor, a submission for recordation does not contain sufficient information to determine the fair market value of real property conveyed by a deed, an economic interest in real property transferred by a deed, or the principal amount of debt secured by a deed, the Mayor may determine the amount from the information available.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 304; Sept. 13, 1980, D.C. Law 3-92, § 101(d), 27 DCR 3390; Sept. 9, 1989, D.C. Law 8-20, § 2(d), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(f), 41 DCR 2096.)

Section references. — This section is referred to in § 42-1101.

Prior Codifications. — 1981 Ed., § 45-924. 1973 Ed., § 45-724.

Legislative history of Law 3-92. — For legislative history of D.C. Law 3-92, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 8-20. — For legislative history of D.C. Law 8-20, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Editor's notes. — Application of Law 8-20: See Historical and Statutory Notes following § 42-1101.

Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

CASE NOTES

In general.

Where corporation, in course of liquidation, conveyed to trustees for stockholders realty of fair market value of \$1,900,000, and statute provides that where no price is paid, consideration for deed shall, for purposes of recordation tax, be construed to be fair market value of realty, recordation tax was required to be based on fair market value of \$1,900,000 and not on \$207,335.03. D.C. Code 1961, §§ 45-723, 45-724. *Dupont Park Apartments, Inc. v. District of Columbia*, 345 F.2d 109, 1965 U.S. App. LEXIS 6132 (C.A.D.C. 1965).

Recording of partner's deed to partnership property represented a transfer of property from one legal entity to another, so as to be subject to deed recordation tax, despite fact that such partner, to whom all partnership interests of the other partners had been as-

signed, was the participant on both sides of the deed transaction, that partnership had dissolved and that partner gave no consideration for the property. D.C. Code 1981, §§ 41-129, 45-922(6), 45-924. *Cowan v. District of Columbia Dep't of Finance & Revenue*, 454 A.2d 814, 1983 D.C. App. LEXIS 290 (1983).

A transfer is all that the deed recordation tax statute requires; consideration is not required. D.C. Code 1981, § 45-924. *Cowan v. District of Columbia Dep't of Finance & Revenue*, 454 A.2d 814, 1983 D.C. App. LEXIS 290 (1983).

The law of the District of Columbia does not require that the recordation and transfer taxes on real property sold in foreclosure be computed solely on the basis of "fair market value" rather than the amount that was actually paid. *Askin v. District of Columbia*, 123 WLR 1605 (Super. Ct. 1995).

§ 42-1105. Investigation by Mayor; summons; production of books, records, etc.; compelling attendance and production; refusal or obstruction of investigation. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 305; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(41); July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-925. 1973 Ed., § 45-725.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 2-91. — For legislative history of D.C. Law 2-91, see Historical and Statutory Notes following § 42-1103.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1106. No recordation until return filed and tax paid; deeds evidencing transfer of economic interest in real property in District. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 306; Sept. 9, 1989, D.C. Law 8-20, § 2(e), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(g), 41 DCR 2096; May 5, 1995, D.C. Law 11-9, § 2, 42 DCR 1173; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-926. 1973 Ed., § 45-726.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 8-20. — For legislative history of D.C. Law 8-20, see Historical and Statutory Notes following § 42-1101.

Legislative history of Law 10-128. — For legislative history of D.C. Law 10-128, see Historical and Statutory Notes following § 42-1102.01.

Legislative history of Law 11-9. — Law 11-9, the “Real Property Deed Recordation Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-14, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on February 17, 1995, it was as-

signed Act No. 11-19 and transmitted to both Houses of Congress for its review. D.C. Law 11-9 became effective on May 5, 1995.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Editor's notes. — Application of Law 8-20: See Historical and Statutory and Historical Notes following § 42-1101.

Application of Law 10-128: See Historical and Statutory Notes following § 42-1101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1107. Burden on taxpayer to prove deed exempt from tax.

For the purpose of proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable and the burden shall be upon the taxpayer to show that a deed is exempt from tax.

(Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 307.)

Prior Codifications. — 1981 Ed., § 45-927. 1973 Ed., § 45-727.

§ 42-1108. Deficiencies in tax; notice of determination; protests; hearings; time for payment. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 308; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-928. 1973 Ed., § 45-728.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 10(c) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds

Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1108.01. Enforcement.

This chapter shall be enforced in accordance with the provisions of chapters 41, 42, 43 and 44 of Title 47, including criminal enforcement, imposition or abatement of penalties and interest, administration of this chapter, and collection of taxes imposed hereunder; provided, that the denial of an exemption applied for under authority of § 42-1102 shall be subject to the same notice and appeal provisions and procedures as set forth under § 47-1009 relating to the denial of a real property tax exemption applied for under authority of § 47-1002.

(Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 308a, as added Apr. 4, 2003, D.C. Law 14-282, § 9(c), 50 DCR 896.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 10(c) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) addition, see § 10(c) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) addition of § 42-1108.01, see § 10(b) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) addition of § 42-1108.01, see § 10(c) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) addition of § 42-1108.01, see § 10(c) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1109. When Mayor may compromise tax. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 309; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-929. 1973 Ed., § 45-729.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments

Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1110. When Mayor may compromise tax; written agreement as to tax liability; finality thereof; penalties for certain acts in relation to compromises and agreements; prosecutions. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 14, Pub. L. 87-408, title III, § 310; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-930. 1973 Ed., § 45-730.

Temporary legislation. — Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1111. Mayor may compromise penalties and adjust interest. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 311; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-931. 1973 Ed., § 45-731.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1112. Limitations; assessment or proceeding within 3 years of recordation of deed; exceptions; agreement to extend period; tolling thereof. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 312; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-932. 1973 Ed., § 45-732.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1113. Administration of oaths and affidavits by Mayor. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 313; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-933. 1973 Ed., § 45-733.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1114. Appeal from deficiency assessment.

Any person aggrieved by any assessment of a deficiency in tax finally determined by the Mayor under the provisions of § 42-1108 [repealed] may appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, and 47-3306 to 47-3308, as amended and as the same may hereinafter be amended.

(Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 314; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, §§ 156(b), 161(e)(1).)

Prior Codifications. — 1981 Ed., § 45-934. 1973 Ed., § 45-734.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(d) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 10(d) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 10(d) of

Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 10(d) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 10(d) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1115. Overpayments and refunds thereof. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 315; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-935. 1973 Ed., § 45-735.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act

of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1116. Stamps and other devices as evidence of collection and payment of taxes. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title II, § 316; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-936. 1973 Ed., § 45-736.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments

Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(334) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 7111 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1117. Promulgation of rules and regulations by Mayor.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 317; July 25, 1989, D.C. Law 8-17, § 8(b), 36 DCR 4160.)

Prior Codifications. — 1981 Ed., § 45-937. 1973 Ed., § 45-737.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(e) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 10(e) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 10(e) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 10(e) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 10(e) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 8-17. — For legislative history of D.C. Law 8-17, see Historical and Statutory Notes following § 42-1103.

Editor's notes. — Application of Law 8-17: See Historical and Statutory Notes following § 42-1103.

§ 42-1118. Abatement of taxes due where cost does not warrant collection. [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 318; Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-938. 1973 Ed., § 45-738.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see

§ 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1119. Elimination of fractional stamps or devices; payment of tax to nearest dollar.

For the purpose of avoiding, in the case of any stamps or devices employed pursuant to authority of this chapter, the issuance of stamps or the employment of devices representing fractional parts of \$1, the Mayor is authorized, in his discretion, to limit the denominations of such stamps or devices to amounts representing \$1 or multiples of \$1, and to prescribe further that where part of the tax due is a fraction of \$1, the tax paid shall be paid to the nearest dollar.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 319.)

Prior Codifications. — 1981 Ed., § 45-939. 1973 Ed., § 45-739.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1120. General criminal penalties; prosecutions by Corporation Counsel [Repealed].

Repealed.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 320; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(a), 161(e)(2); Apr. 4, 2003, D.C. Law 14-282, § 9(d), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-940. 1973 Ed., § 45-740.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 10(f) of the

Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see

§ 10(f) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments

Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 10(f) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1121. Illegal acts relating to stamps and other devices; penalties.

Any person who:

(1) With intent to defraud, alters, forges, makes, or counterfeits any stamp, or other device prescribed under authority of this chapter for the collection or payment of any tax imposed by this chapter, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, or other device; or

(2) Fraudulently cuts, tears, or removes from any deed, parchment, paper, instrument, writing, or article, upon which any tax is imposed by this chapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this chapter; or

(3) Fraudulently uses, joins, fixes, or places to, with, or upon any deed, parchment, paper, instrument, writing, or article, upon which a tax is imposed by this chapter:

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other deed, parchment, paper, instrument, writing, or article upon which any tax is imposed by this chapter; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4)(A) Wilfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) Knowingly or wilfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any deed, parchment, paper, instrument, writing, package, or article;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both.

(Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 321.)

Prior Codifications. — 1981 Ed., § 45-941. 1973 Ed., § 45-741.

§ 42-1122. Collected moneys to be deposited in United States Treasury.

All moneys collected under this chapter shall be deposited in the Treasury of the United States to the credit of the General Fund of the District of Columbia.; provided, that 15% of the monies collected under this chapter shall be deposited into the Housing Production Trust Fund established by § 42-2802.

(Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 322; Apr. 19, 2002, D.C. Law 14-114, § 502(b), 49 DCR 1468; Mar. 13, 2004, D.C. Law 15-105, § 74(b), 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 45-942. 1973 Ed., § 45-742.

Effect of amendments. — D.C. Law 14-114 substituted “General Fund of the District of Columbia; provided, that 15% of the monies collected under this chapter shall be deposited into the Housing Production Trust Fund established by § 42-2802” for “General Fund of the District of Columbia”.

D.C. Law 15-105 validated previously made technical corrections.

Legislative history of Law 14-114. — Law

14-114, the “Housing Act of 2002”, was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

§ 42-1123. Separability clause.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid the remainder of this chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 323.)

Prior Codifications. — 1981 Ed., § 45-943. 1973 Ed., § 45-743.

§ 42-1124. Appropriations to carry out provisions of chapter.

There are hereby authorized to be appropriated such amounts as may be necessary for the carrying out of the provisions of this chapter, including the use of stamps or other devices for evidencing payment of the tax imposed by this chapter.

(Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 324.)

Prior Codifications. — 1981 Ed., § 45-944. 1973 Ed., § 45-744.

CHAPTER 12. RECORDER OF DEEDS.

Sec.

- 42-1201. [Repealed].
- 42-1202. Purchase of necessary equipment; employment of personnel.
- 42-1203 to 42-1205. [Repealed].
- 42-1206. Public records to be open for free, public inspection.
- 42-1207. Notice of pendency of action (lis pendens).
- 42-1208. Purchase of typewriting machines; preference for typewritten records.
- 42-1209. Certain records to be recopied for preservation; limitation on expense.
- 42-1210. Fees of Recorder of Deeds.
- 42-1211. Surcharges.
- 42-1212. Fees and emoluments of Recorder of Deeds deposited with Collector of Taxes.

Sec.

- 42-1213. Maintenance of office to be included in estimate of District appropriations; appropriations for building, equipment, and supplies authorized.
- 42-1214. Recorder of Deed Automation and Infrastructure Improvement Fund.
- 42-1215. Recordation of service and discharge certificates; certified copies thereof; recordation of notice or other document relating to federal tax liens; fees.
- 42-1216. Office closed on Saturdays.
- 42-1217. Extension of time for recordation; Saturday, Sunday, and legal holidays.
- 42-1218. Authority of Mayor to adjust fees; computation of rates; exception.

§ 42-1201. Appointment; duties; residency requirement; mayoral supervision [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 548; June 9, 1952, 66 Stat. 129, ch. 373, § 1; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 2; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 14; Mar. 14, 1985, D.C. Law 5-159, § 23, 32 DCR 30; Apr. 4, 2003, D.C. Law 14-282, § 7(b), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-901. 1973 Ed., § 45-701.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 5-159. — Law 5-159, the “End of Session Technical Amend-

ments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-1202. Purchase of necessary equipment; employment of personnel.

The Recorder of Deeds of the District of Columbia is authorized and empowered to purchase such machines and equipment as he may deem necessary or expedient for the efficient, expeditious, and economical recording of all deeds and other instruments of writing entitled by law to be recorded, and to employ such personnel as may be required to operate the same and to perform necessary services in connection therewith; and all deeds and other instruments of writing entitled by law to be recorded in the Office of the Recorder of Deeds which are recorded by means of such machines or equipment are hereby declared to be legally recorded.

(Aug. 4, 1947, 61 Stat. 730, ch. 456.)

Prior Codifications. — 1981 Ed., § 45-902. 1973 Ed., § 45-701b.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary amendment of section, see § 3 of the Lower Income Homeownership Tax Abatement and Incentives Act of 1983 Amendment Emergency

Act of 1988 (D.C. Act 7-282, January 6, 1989, 36 DCR 481).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

§ 42-1203. Deputy Recorder; effect of performance of duties. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549; June 9, 1952, 66 Stat. 129, ch. 373, § 2; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 3; Mar. 3, 1979, D.C. Law 2-139, § 3205(uu), 25 DCR 5740; Apr. 4, 2003, D.C. Law 14-282, § 7(b), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-903. 1973 Ed., § 45-702.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 8(b) of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 8(b) of Tax Clarity and Related Amendments

Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee

on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1204. Second Deputy Recorder; effect of performance of duties. [Repealed].

Repealed.

(Mar. 3, 1925, 43 Stat. 1102, ch. 416; June 9, 1952, 66 Stat. 129, ch. 373, § 3; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 4; Mar. 3, 1979, D.C. Law 2-139, § 3205(vv), 25 DCR 5740; Apr. 4, 2003, D.C. Law 14-282, § 8, 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-904. 1973 Ed., § 45-703.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 9 of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) repeal of section, see § 9 of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 9 of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) repeal of section, see § 9 of Tax Clarity and Related Amendments

Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) repeal of section, see § 9 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 42-1203.

Legislative history of Law 14-191. — For Law 14-191, see notes following § 42-405.

Legislative history of Law 14-228. — For Law 14-228, see notes following § 42-204.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1205. Vacancy in Office of Recorder; Deputy to fill vacancy. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 550; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2; Apr. 4, 2003, D.C. Law 14-282, § 7(b), 50 DCR 896.)

Prior Codifications. — 1981 Ed., § 45-905. 1973 Ed., § 45-704.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

§ 42-1206. Public records to be open for free, public inspection.

All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the Recorder of Deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge.

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556.)

Prior Codifications. — 1981 Ed., § 45-906. 1973 Ed., § 45-705.

§ 42-1207. Notice of pendency of action (lis pendens).

(a) The pendency of an action or proceeding in either state or federal court in the District of Columbia, or in any other state, federal, or territorial court, affecting the title to or tenancy interest in, or asserting a mortgage, lien, security interest, or other ownership interest in real property situated in the District of Columbia, does not constitute notice to, and shall not affect a party not a party thereto, unless a notice of the pendency of the action or proceeding is filed for recordation, as required by subsection (b) of this section.

(b) The notice referred to in subsection (a) of this section shall be effective only if the underlying action or proceeding directly affects the title to or tenancy interest in, or asserts a mortgage, lien, security interest, right of first offer, right of first refusal, or other ownership interest in real property situated in the District of Columbia, and the notice is in writing, signed by the plaintiff, defendant, other party to the action or proceeding, or by a counsel of record for such party, desiring to have the notice filed for recordation, and notarized, stating the:

- (1) Name of the court in which the action or proceeding has been filed;
- (2) Title of the action or proceeding;
- (3) Docket number;
- (4) Date of filing;
- (5) Object of the filing;
- (6) Amount of the claim asserted or the nature of any other relief sought;
- (7) Name of the person whose estate is intended to be affected thereby;

and

- (8) Description of the real property sought to be affected.

(c) The Recorder of Deeds shall admit for filing and recordation all notices that meet the requirements of subsection (b) of this section. Such notices shall have effect from the time of the filing for recordation.

(d)(1) If judgment is rendered in the action or proceeding against the party who filed the notice of the pendency, the judgment shall order the cancellation and release of the notice at the expense of the filing party as part of the costs of the action or proceeding. When appropriate, the court may also impose sanctions for the filing. In a case in which an appeal from such judgment would lie, neither party shall record the judgment until after the expiration of the latest of the following:

- (A) The time in which an appeal may be filed;

(B) The time in which an appeal, which has been applied for, has been refused; or

(C) Final judgment has been entered by the appellate court from an appeal which was granted.

(2) The party who filed the notice of pendency shall file the judgment ordering the cancellation and release of the notice with the Recorder of Deeds within 30 days of the occurrence of the applicable circumstances set forth in paragraph (1)(A), (B), or (C) of this subsection.

(e) If a notice of the pendency of an action or proceeding is filed for recordation and the debt or other relief for which the action or proceeding was

brought is satisfied, it shall be the duty of the party who filed the notice of pendency to file for recordation a release of the notice of pendency of the action or proceeding within 30 days after the satisfaction.

(e-1) The party who filed the notice of pendency shall have the duty to cancel the notice by filing a release with the Recorder of Deeds if the underlying action or proceeding has been dismissed or terminated without entry of a judgment, and the filing of the release is not required under subsection (e) of this section. The release shall be filed within 30 days of the date the underlying action or proceeding was dismissed or terminated or of the applicable time period set forth in subsection (d)(1)(A),(B), or (C) of this section.

(e-2) The Mayor shall have the authority to file with the Recorder of Deeds a release of a notice of pendency if a cancellation or release of that notice has not been filed as required by subsection (d), (e), or (e-1) of this section and one year has elapsed since the date the cancellation or release should have been filed under subsection (d), (e), or (e-1) of this section.

(e-3)(1) Failure to cancel the notice in accordance with subsection (d), (e), or (e-1) of this section shall result in a civil fine of up to \$500.

(2) To implement this subsection, the Mayor shall establish a schedule of fines pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.]. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(f) The Mayor shall promulgate regulations to implement the provisions of this section. The Mayor may, by regulation, establish reasonable fees for recordation of notices of lis pendens and may, by regulation, establish reasonable fees for releases of notices of lis pendens.

(g) A person with an ownership interest in real property upon which a notice of pendency of action has been filed under this section may:

(1) If the action or proceeding underlying the notice is pending in either state or federal court in the District of Columbia, file a motion to cancel the notice with the court in which the underlying action or proceeding is pending or, if the action is on appeal, in the court in which the action was originally brought; or

(2) If the action or proceeding underlying the notice is not pending in a court of the District of Columbia, bring an action in the Superior Court of the District of Columbia to cancel the notice.

(h) A court in which a motion is filed or an action is brought under subsection (g) of this section may issue an order canceling the notice of pendency of action prior to the entry of judgment in the underlying action or proceeding if the court finds any one of the following:

(1) The notice does not conform to the requirements of subsection (b) of this section;

(2)(A) The moving party will suffer an irreparable injury if the notice is not cancelled;

(B) The moving party has demonstrated a substantial likelihood of success on the merits in the underlying action or proceeding;

(C) A balancing of the potential harms favors the moving party; and

(D) The public interest favors cancelling the notice; or

(3) The underlying action or proceeding has not been prosecuted in good faith, with all reasonable diligence, and without unnecessary delay.

(i) The provisions of the Lis Pendens Amendment Act of 2010 [D.C. Law 18-180], shall apply to any notice of pendency recorded before May 27, 2010.

(j) The provisions of subsections (a) and (b) of this section shall not be construed to apply where the title to or interest in the real property affected by the notice is not directly at issue in the underlying action or proceeding.

(k) For the purposes of this section, the term “tenancy interest” means the rights of a tenant or tenants as set forth under Chapter 34 of this title [§ 42-3401.01 et seq.], regarding the:

(1) Legitimacy of a conversion of rental housing to condominium or cooperative housing; or

(2) Purchase of rental housing.

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556a, as added June 24, 2000, D.C. Law 13-129, §§ 2, 3, 47 DCR 2684; Apr. 27, 2001, D.C. Law 13-292, § 1001, 48 DCR 2087; May 27, 2010, D.C. Law 18-180, § 2, 57 DCR 3384.)

Effect of amendments. — D.C. Law 13-292, in subsec. (b), substituted “other party” for “or other party”.

D.C. Law 18-180, in subsec. (a), substituted “affecting the title to or tenancy interest in, or asserting a mortgage, lien, security interest, or other ownership interest” for “affecting the title to or asserting a mortgage, lien, security interest, or other interest”; in subsec. (b), substituted “this section shall be effective only if the underlying action or proceeding directly affects the title to or tenancy interest in, or asserts a mortgage, lien, security interest, right of first offer, right of first refusal, or other ownership interest in real property situated in the District of Columbia, and the notice is” for “this section shall be”; rewrote subsec. (d); in subsec. (e), substituted “party who filed the notice of pendency” for “prevailing party”; and added subsecs. (e-1) to (e-3) and (g) to (k). Prior to amendment, subsec. (d) read as follows: “(d) If judgment is rendered in the action or proceeding against the party who filed the notice of the pendency, the judgment shall order the cancellation and release of the notice at the expense of the filing party as part of the costs of the action or proceeding. When appropriate, the court may also impose sanctions for the filing. In a case in which an appeal from such judgment would lie, the prevailing party shall not record the judgment until after the expiration of the latest of the following: (1) The time in which an appeal may be filed; (2) The time applied for, has been refused; or (3) Final judgment has been entered by the appellate court from an appeal which was granted.”

Legislative history of Law 13-129. — Law 13-129, the “Fairness in Real Estate Transactions and Retirement Funds Protection Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-299 and transmitted to both Houses of Congress for its review. D.C. Law 13-129 became effective on June 24, 2000.

Legislative history of Law 13-292. — Law 13-292, the “Omnibus Trusts and Estates Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Legislative history of Law 18-180. — Law 18-180, the “Lis Pendens Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-91, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on December 1, 2009, and March 16, 2010, respectively. Signed by the Mayor on April 7, 2010, it was assigned Act No. 18-377 and transmitted to both Houses of Congress for its review. D.C. Law 18-180 became effective on May 27, 2010.

CASE NOTES

ANALYSIS

Cancellation of lis pendens.

Construction with other laws.
Foreclosure actions.
In general.

Remand.
 Retroactive application.
 Sanctions.

Cancellation of lis pendens.

Defendants' motion to cancel lis pendens recorded by plaintiffs on their residence was not ripe, where plaintiffs' action against defendants was dismissed for failure to effect timely service, dismissal gave defendants relief they sought, and matter involved unsettled area of District of Columbia law. *Mann v. Castiel*, 729 F.Supp.2d 191, 2010 U.S. Dist. LEXIS 79546 (2010), affirmed by 681 F.3d 368, 401 U.S. App. D.C. 37, 2012 U.S. App. LEXIS 11051, 82 Fed. R. Serv. 3d (Callaghan) 931 (2012).

Cancellation of lis pendens was not appropriate under District of Columbia law where complaint sufficiently stated a cause of action to impress a constructive trust on real property. *McWilliams Ballard, Inc. v. Level 2 Dev.*, 697 F.Supp.2d 101, 2010 U.S. Dist. LEXIS 27577 (2010).

Trial court's cancellation of lis pendens filed by construction company in connection with its mechanic's lien on property was necessary, as, once court correctly declined to enforce lien, no action affecting an interest in real property was still pending, in that company's two remaining counts against purported owner of property for breach of contract and quantum meruit were for money damages. *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 2009 D.C. App. LEXIS 60 (2009).

Trial court was not justified in canceling plaintiff's lis pendens prior to judgment in action to impose constructive trust on profits or increased value of defendant's home that was allegedly purchased with plaintiff's share of proceeds from sale of prior home that plaintiff co-owned with defendant; defendant had not shown that plaintiff failed to state claim for constructive trust, agreement from defendant not to transfer property to third party did not secure plaintiff's equitable interest pending litigation, and trial court's consideration of potential money damages as remedy was speculative and inadequate basis for canceling lis pendens. *Heck v. Adamson*, 941 A.2d 1028, 2008 D.C. App. LEXIS 16 (2008).

Construction with other laws.

Judgment creditor was required to record judgment lien against judgment debtor's real property pursuant to statute governing the recording of final judgments, not pursuant to lis pendens statute, since lis pendens statute did not apply to litigation that was no longer pending, and thus creditor's lien had priority over liens against the property recorded after creditor had recorded lien under final judgment statute. *Fid. Nat'l Title Ins. Co. v. Tillerson*, 2 A.3d 198, 2010 D.C. App. LEXIS 495 (2010).

Foreclosure actions.

Tax lien holder's mere filing of foreclosure

action did not invoke lis pendens, as protection for purchaser's equitable conversion claim after lien holder refused purchaser's attempts to redeem the property, given that lien holder failed to file notice of pendency of foreclosure action for recordation as required by statute governing lis pendens. *Trustee 1245 13th Street, NW No. 608 Trust v. Anderson*, 905 A.2d 181, 2006 D.C. App. LEXIS 433 (2006).

In general.

Under District of Columbia law, lis pendens was not injunction, and thus federal district court had no basis upon which to order parties that recorded lis pendens to post bond pending recordation of judgment dismissing plaintiffs' action against defendants. *Mann v. Castiel*, 729 F.Supp.2d 191, 2010 U.S. Dist. LEXIS 79546 (2010), affirmed by 681 F.3d 368, 401 U.S. App. D.C. 37, 2012 U.S. App. LEXIS 11051, 82 Fed. R. Serv. 3d (Callaghan) 931 (2012).

For a lis pendens to operate, there must be a pending case affecting the title to or asserting a mortgage, lien, security interest, or other interest in real property situated in the District of Columbia. *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 2009 D.C. App. LEXIS 60 (2009).

The legal effect of lis pendens is that nothing relating to the subject matter of the suit can be changed while it is pending and one acquiring an interest in the property involved therein from a party thereto takes such interest subject to the parties' rights as finally determined, and is conclusively bound by the results of the litigation. *Heck v. Adamson*, 941 A.2d 1028, 2008 D.C. App. LEXIS 16 (2008).

Plaintiff's assertion that defendant's home was purchased and renovated in part with plaintiff's share of proceeds from sale of home plaintiff co-owned with defendant stated claim for equitable interest in defendant's home via constructive trust, as justification for filing lis pendens against property. *Heck v. Adamson*, 941 A.2d 1028, 2008 D.C. App. LEXIS 16 (2008).

Under common law lis pendens doctrine, nothing relating to the subject matter of the suit can be changed while it is pending and one acquiring an interest in the property involved therein from a party thereto takes such interest subject to the parties' rights as finally determined, and is conclusively bound by the results of the litigation. *Trustee 1245 13th Street, NW No. 608 Trust v. Anderson*, 905 A.2d 181, 2006 D.C. App. LEXIS 433 (2006).

Remand.

Remand to trial court was warranted for purpose of determining whether landlord was entitled to award of sanctions under statute governing filing of lis pendens in action that was brought by assignee of apartment build-

ing's tenant association's right to purchase under Tenant Opportunity to Purchase Act and that sought specific performance to compel good-faith bargaining by landlord relating to sale of building; trial court failed to give due consideration to whether sanctions were appropriate. 6921 Ga. Ave., N.W., Ltd. P'ship v. Universal Cmty. Dev., LLC, 954 A.2d 967, 2008 D.C. App. LEXIS 363 (2008).

Retroactive application.

Lis pendens statute was not retroactive, and thus prevailing parties in underlying quiet title action, in which judgment had been entered prior to enactment of statute, were not required to file a statutory notice of lis pendens to preserve their common-law right of priority; language of statute did not manifest a clear intent for retroactive application, and it could not be presumed that enacting council intended to revoke litigants' pre-existing common-law

rights of priority. Bank of Am., N.A. v. Griffin, 2 A.3d 1070, 2010 D.C. App. LEXIS 498 (2010).

Sanctions.

Trial court need not make a finding of bad faith in relation to a party's filing of lis pendens in order to exercise its discretion in imposing sanctions under statute governing filing of lis pendens. 6921 Ga. Ave., N.W., Ltd. P'ship v. Universal Cmty. Dev., LLC, 954 A.2d 967, 2008 D.C. App. LEXIS 363 (2008).

In determining whether sanctions are appropriate under statute governing filing of lis pendens, a court should assess whether the non-prevailing party's filing of lis pendens was for an improper purpose, or was unwarranted by existing law or a frivolous argument for the extension, modification, or reversal of existing law, or was without evidentiary support. 6921 Ga. Ave., N.W., Ltd. P'ship v. Universal Cmty. Dev., LLC, 954 A.2d 967, 2008 D.C. App. LEXIS 363 (2008).

§ 42-1208. Purchase of typewriting machines; preference for typewritten records.

(a) The Recorder of Deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

(b) The recording of all instruments filed for record in the Office of the Recorder of Deeds shall be done with book typewriter, except in those cases where, on account of the character of the work, the use of a pen shall be found by the Recorder to be necessary.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 551; June 27, 1906, 34 Stat. 489, ch. 3553.)

Prior Codifications. — 1981 Ed., § 45-907. 1973 Ed., § 45-706.

Editor's notes. — Installation and operation of automated system: Section 4 of D.C. Law 11-257 provided that upon installation and operation of an automated system, this section shall no longer apply.

Installation and operation of automated system: Section 4 of D.C. Law 11-257 provided that upon installation and operation of an automated system pursuant to § 42-1214(b), this section shall no longer apply.

§ 42-1209. Certain records to be recopied for preservation; limitation on expense.

That the Recorder of Deeds of the District of Columbia shall recopy such of the records in his office as may, in his judgment and that of a judge of the Superior Court of the District of Columbia appointed for that purpose, need recopying in order to preserve the originals from destruction. The expense of

such recopying may not in any fiscal year exceed \$1,000 and such expense shall be certified by a judge of the Superior Court appointed for that purpose and audited by the General Accounting Office.

(Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(d).)

Prior Codifications. — 1981 Ed., § 45-908. 1973 Ed., § 45-707.

§ 42-1210. Fees of Recorder of Deeds.

(a) The legal fees for the services of the Recorder shall be as follows:

(1) For filing, recording, and indexing, or for making certified copy of any instrument containing 200 words or less, \$1, and \$.20 for each additional 100 words, to be collected at the time of filing, or when the copy is made;

(2) For each certificate and seal, \$.50;

(3) For searching records extending back 2 years or less next preceding current date, \$.50 and \$.15 for each additional year, to be paid by the party for whom the search may be made;

(4) For recording a plat or survey, \$.20 for each course such survey may contain;

(5) For recording a town plat, \$.25 for each lot such plat may contain;

(6) For taking any acknowledgment, \$.50;

(7) For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels, including a release of any such instrument, \$2; provided, that for the filing of a release of any such instrument filed prior to September 3, 1952, the Recorder of Deeds shall collect a fee of \$.50;

(8) For filing an affidavit pursuant to § 41-202, \$2;

(9) For filing and indexing any other paper required by law to be filed in his office, \$.50;

(10) For filing and recording a certified copy of a judgment, decree, or entry or order of forfeiture of a recognizance, filed and recorded under § 15-102(a), \$1;

(11) For recording the release of a lien established by the recordation of a judgment, decree, or an entry or order of forfeiture of a recognizance under § 15-102(a), \$.50.

(b) In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the Recorder of Deeds at the time of the filing of the certificate of incorporation \$.50 on each \$1,000 of the amount of capital stock of the corporation as set forth in its said certificate; provided, however, that the fee so paid shall not be less than \$50; provided further, that the Recorder of Deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10% of the par value of the stock has been actually paid in

cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees.

(c) In addition to fees otherwise provided for, the Recorder of Deeds shall charge and collect the following fees:

(1) For filing and recording each notice of mechanic's lien, \$1;

(2) For entering release of mechanic's lien, \$.50 for each order of lienor; and

(3) For each undertaking of lienee, \$.75.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; June 17, 1935, 49 Stat. 384, ch. 265; June 5, 1952, 66 Stat. 128, ch. 370, § 5; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(c); Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89-745, § 6.)

Cross references. — Cooperative associations, articles of incorporation, filing fees, see § 29-906.

Motor vehicle lien law, fees, see § 50-1212.

Recordation of instruments relating to personal property, see §§ 28:9-301 et seq., 50-1501.01 et seq.

Recording fees under money lenders law, see § 26-905.

Section references. — This section is referred to in § 42-1218.

Prior Codifications. — 1981 Ed., § 45-909. 1973 Ed., § 45-708.

§ 42-1211. Surcharges.

(a) Notwithstanding any other provision of law, a surcharge of \$5 per document shall be paid before any document is accepted for recordation at the Recorder of Deeds.

(b) In addition to the funds collected pursuant to subsection (a) of this section, the Recorder of Deeds may accept monetary and non-monetary donations.

(c) Repealed.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552a, as added Apr. 12, 1997, D.C. Law 11-257, § 2, 44 DCR 1247; Oct. 3, 2001, D.C. Law 14-28, § 2402, 48 DCR 6981; Aug. 16, 2008, D.C. Law 17-219, § 2017, 55 DCR 7598.)

Section references. — This section is referred to in § 42-1214.

Prior Codifications. — 1981 Ed., § 45-909.1.

Effect of amendments. — D.C. Law 14-28 rewrote subsec. (c) which had read as follows: "(c) The \$5 surcharge established pursuant to subsection (a) of this section shall remain in effect for a 5-year period beginning from April 12, 1997."

D.C. Law 17-219 repealed subsec. (c), which had read as follows: "(c) The \$5 surcharge established under subsection (a) of this section shall remain in effect for a 10-year period beginning from April 12, 1997."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2202 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 11-257. — Law 11-257, the "Recorder of Deeds Recordation Surcharge Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-670, which was referred to the Committee on the Whole. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-512 and transmitted to both Houses of Congress for its review. D.C. Law 11-257 became effective on April 12, 1997.

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned

Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 42-1103.

Short title. — Short title: Section 2016 of D.C. Law 17-219 provided that subtitle G of

title II of the act may be cited as the “Recorder of Deeds Recordation Surcharge Amendment Act of 2008”.

Editor’s notes. — Section 2018 of D.C. Law 17-219 provided that this subtitle shall apply as of April 11, 2007.

§ 42-1212. Fees and emoluments of Recorder of Deeds deposited with Collector of Taxes.

All of the fees and emoluments of the Office of Recorder of Deeds of the District of Columbia shall be paid at least weekly to the Collector of Taxes for the District of Columbia for deposit in the Treasury of the United States to the credit of the District of Columbia.

(Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1.)

Prior Codifications. — 1981 Ed., § 45-910. 1973 Ed., § 45-709.

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance

Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IV-C of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IV-C of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

§ 42-1213. Maintenance of office to be included in estimate of District appropriations; appropriations for building, equipment, and supplies authorized.

The annual estimates of appropriations for the government of the District of Columbia shall include estimates of appropriations for the operation and maintenance of the Office of the Recorder of Deeds. And appropriations are hereby authorized for a suitable record building for the Office of the Recorder of Deeds, and for personal services, rentals, office equipment, office supplies, and such other expenditures as are essential for the efficient maintenance and conduct of such office.

(Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

Prior Codifications. — 1981 Ed., § 45-911. 1973 Ed., § 45-710.

§ 42-1214. Recorder of Deed Automation and Infrastructure Improvement Fund.

(a) Notwithstanding §§ 42-1205 [repealed] and 42-1212, there is established in the Treasury of the District of Columbia a fund to be known as the Recorder of Deeds Automation and Infrastructure Improvement Fund ("Fund") into which shall be deposited all funds collected pursuant to § 42-1211. The Recorder of Deeds Automation and Infrastructure Improvement Fund shall be a fund as defined in §§ 47-373, 47-876, and 47-1304(h). All interest earned on monies deposited in the Fund shall be credited to the Fund established herein, and used solely for the purposes designated in this section and as described in subsection (b-1) of this section. Revenues in the Fund shall remain available for expenditure without regard to fiscal year limitation.

(b) Revenues accruing to the Fund shall be used solely and exclusively to cover the costs of updating the automated system of the Recorder of Deeds and the repair and improvement of the infrastructure located at 515 D Street, N.W., Washington, D.C., and any incidental costs associated with that repair and improvement. These costs shall include the purchasing of computer hardware and software, maintenance of the new computer system, training staff to implement and operate the new system, and the repair of the infrastructure components necessary to meet the overall mission of the Recorder of Deeds.

(b-1) Notwithstanding subsection (b) of this section, revenues accounted for and deposited into the Fund under the authority of §§ 47-876 and 47-1340(h), together with interest accruing thereon, shall be used solely and exclusively by the Real Property Tax Administration of the Office of Tax and Revenue for the purposes under which the revenue was charged and collected.

(c) For purposes of this section, the term "infrastructure components" means the air and heating systems, elevator, roof, ceilings, windows, doors, walls, plumbing, floors, basement, electrical system, mechanical systems, and other similar components that make up the improvements located at 515 D Street, N.W., Washington, D.C.

(d) The Mayor shall submit to the Council, as part of the annual budget, a requested appropriation for expenditures for the restricted purposes designated in subsections (b) and (b-1) of this section from the Fund. The request shall include an accounting of the use of funds from the Fund in the previous fiscal year. Appropriations from the Fund shall remain available until expended. Any revenue received, but not appropriated in a given fiscal year, shall be retained by the Fund.

(e) Nothing in this section shall be construed to prohibit or limit the appropriation of additional funds from the revenues of the District for the operations of the Real Property Tax Administration of the Office of Tax and Revenue, including appropriations to support the purposes specified in subsections (b) and (b-1) of this section. The revenues accruing to the Fund shall be considered as supplementing and enhancing the operations of the Real

Property Tax Administration of the Office of Tax and Revenue, and are not intended to be used to supplant support for the Real Property Tax Administration of the Office of Tax and Revenue provided through the general funds of the District.

(Apr. 24, 1926, 44 Stat. 322, ch. 176, § 3, as added Apr. 12, 1997, D.C. Law 11-257, § 3, 44 DCR 1247; Apr. 20, 1999, D.C. Law 12-264, § 50, 46 DCR 2118; Apr. 4, 2003, D.C. Law 14-282, § 10, 50 DCR 896; Mar. 13, 2004, D.C. Law 15-105, § 72(b), 51 DCR 881; Mar. 2, 2007, D.C. Law 16-192, § 1022, 53 DCR 6899.)

Prior Codifications. — 1981 Ed., § 45-911.1.

Effect of amendments. — D.C. Law 14-282, in subsec. (a), substituted “§§ 47-373, 47-876, and 47-1340(h)” for “§ 47-373” and substituted “, and used solely for the purposes designated in this section and as described in subsection (b-1) of this section.” for “and used solely for the purposes designated in this section.”; added subsec. (b-1); in subsec. (d), substituted “subsection (b) and (b-1)” for “subsection (b)”; and in subsec. (e), substituted “Real Property Tax Administration of the Office of Tax and Revenue” for “Recorder of Deeds” and substituted “subsection (b) and (b-1)” for “subsection (b)”.

D.C. Law 15-105, in subssecs. (d) and (e), validated previously made technical corrections.

D.C. Law 16-192 rewrote subsec. (b), which had read as follows: “(b) Revenues accruing to the Fund shall be used solely and exclusively to cover the costs of updating the automated system of the Recorder of Deeds and repair of the infrastructure of improvements located at 515 D Street, N.W., Washington, D.C. These costs shall include, but not be limited to, the purchasing of computer hardware and software, maintenance of the new computer system, training staff to implement and operate the new system, and the repair of the infrastructure components necessary to meet the overall mission of the Recorder of Deeds.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 11 of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 11 of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, Mar. 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 11 of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 11 of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 11 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

For temporary (90 day) amendment of section, see § 1022 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 1022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 1022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 11-257. — For legislative history of D.C. Law 11-257, see Historical and Statutory Notes following § 42-1211.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective April 20, 1999.

Legislative history of Law 14-282. — For Law 14-282, see notes following § 42-204.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Short title. — Short title: Section 1021 of D.C. Law 16-192 provided that subtitle C of title I of the act may be cited as the “Recorder of Deeds Automation and Infrastructure Improvement Fund Use Clarification Act of 2006”.

§ 42-1215. Recordation of service and discharge certificates; certified copies thereof; recordation of notice or other document relating to federal tax liens; fees.

(a) The Recorder shall also receive for record and record all certificates of service and certificates of discharge of persons released from active duty in or discharge from the armed forces of the United States, for which no fee shall be charged or collected, but the record of any certificate authorized by this section to be recorded shall not constitute constructive notice of the existence or contents of such certificate. For making certified copies of any of the foregoing certificates from the records in the Office of the Recorder the usual fees shall be charged.

(b) The Recorder of Deeds shall accept for filing any notice of federal tax lien or any other document affecting such a lien if such notice or document is in the form prescribed by the Secretary of the Treasury or his delegate and could be filed with the Clerk of the United States District Court for the District of Columbia. The fee for each such filing with the Recorder of Deeds shall be the same as the fee charged by the Recorder of Deeds for filing a similar document for a private person. The Recorder of Deeds shall bill the District Director of Internal Revenue on a monthly basis for fees for documents filed by such District Director. Any document releasing or affecting any notice of federal tax lien which has been filed with the Clerk of the United States District Court for the District of Columbia prior to the effective date of this subsection shall be filed with such Clerk.

(Mar. 3, 1901, ch. 854, § 548a; Apr. 27, 1945, 59 Stat. 100, ch. 101; July 5, 1966, 80 Stat. 266, Pub. L. 89-493, § 17(b).)

Prior Codifications. — 1981 Ed., § 45-912.
1973 Ed., § 45-711.

References in text. — The phrase “effective date of this subsection,” near the end of subsection (b), refers to the effective date of the Act of

July 5, 1966, and § 21 of that Act provided that the Act would take effect on the first day of the first month which was at least 90 days after July 5, 1966.

§ 42-1216. Office closed on Saturdays.

Notwithstanding the provisions of any other act, the Office of the Recorder of Deeds for the District of Columbia shall be closed on every Saturday.

(Aug. 2, 1946, 60 Stat. 860, ch. 758, § 1.)

Prior Codifications. — 1981 Ed., § 45-913.

1973 Ed., § 45-712.

§ 42-1217. Extension of time for recordation; Saturday, Sunday, and legal holidays.

Any writing, the time for recording of which expires on a Saturday, or on a Sunday, shall be deemed to have been recorded within the time prescribed if

such writing be recorded on the first day thereafter other than Sunday or a legal holiday.

(Aug. 2, 1946, 60 Stat. 861, ch. 758, § 2.)

Prior Codifications. — 1981 Ed., § 45-914. 1973 Ed., § 45-713.

§ 42-1218. Authority of Mayor to adjust fees; computation of rates; exception.

(a) Notwithstanding the provisions of §§ 42-1210, 50-1212, and 50-1213, or any other act of Congress, the Mayor of the District of Columbia may, from time to time, increase or decrease the fees authorized to be charged for filing, recording, and indexing or for making a certified copy of any instrument; for searching records; for taking acknowledgments; for recording plats; for filing affidavits; for filing certificates of incorporation and amendments of certificates; for recording liens, assignments of liens, or releases of liens on motor vehicles or trailers; or for any other service rendered by the Office of the Recorder of Deeds.

(b) The fees for services rendered by the Office of the Recorder of Deeds shall be fixed at such rates, computed on such bases and in such manner, as may, in the judgment of the Mayor, be necessary to defray the approximate cost of operating the Office of the Recorder of Deeds.

(c) Nothing in this section shall be construed as authorizing the Mayor to modify any provision of Chapters 1, 2, and 3 of Title 29.

(Aug. 3, 1954, 68 Stat. 650, ch. 653, § 1; July 2, 2011, D.C. Law 18-378, § 3(ff), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 45-915. 1973 Ed., § 45-714.

Effect of amendments. — D.C. Law 18-378, in subsec. (c), substituted “Chapters 1, 2, and 3 of Title 29” for “Chapter 1 of Title 29”.

Legislative history of Law 18-378. — Law 18-378, the “District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009”, was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 12A. UNIFORM REAL PROPERTY ELECTRONIC RECORDING.

Sec.	Sec.
42-1231. Definitions.	42-1235. Relation to electronic signatures in Global and National Commerce Act.
42-1232. Validity of electronic documents and digitized images.	
42-1233. Recording of documents.	
42-1234. Uniformity of application and construction.	

§ 42-1231. Definitions.

For the purposes of this chapter, the term:

(1) "Digitized image" means an electronic document that is created as an electronic copy of a paper document that accurately depicts the information on the paper document and is unalterable.

(2) "Document" means information that is:

(A) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) Eligible to be recorded in the land records maintained by the Recorder of Deeds.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Electronic document" means a document that is received by the Recorder of Deeds in an electronic form.

(5) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(6) "Paper document" means a document that is received by the Recorder of Deeds in a form that is not electronic.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(Oct. 18, 2005, D.C. Law 16-25, § 2, 52 DCR 8084.)

Legislative history of Law 16-25. — Law 16-25, the "Uniform Real Property Electronic Recording Act of 2005", was introduced in Council and assigned Bill No. 16-173 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 7, 2005, and July 6, 2005, respectively. Signed by the Mayor on July

14, 2005, it was assigned Act No. 16-134 and transmitted to both Houses of Congress for its review. D.C. Law 16-25 became effective on October 18, 2005.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Real Property Electronic Recording Act.

§ 42-1232. Validity of electronic documents and digitized images.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or other tangible medium, or be in writing, an electronic document or digitized image that satisfies this chapter satisfies the law.

(b) If a law requires, as a condition for recording, that a document be signed, an electronic signature or digitized image of a wet signature on a paper document satisfies the law.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature.

(Oct. 18, 2005, D.C. Law 16-25, § 3, 52 DCR 8084.)

Legislative history of Law 16-25. — For Law 16-25, see notes following § 42-1231.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Real Property Electronic Recording Act.

§ 42-1233. Recording of documents.

(a) The Recorder of Deeds may receive, index, store, archive, and transmit electronic documents or digitized images.

(b) The Recorder of Deeds may provide for access to, and for search and retrieval of, documents and information by electronic means.

(c) The Recorder of Deeds, in addition to accepting electronic documents or digitized images for recording shall continue to accept paper documents and shall place entries for both types of documents in the same index.

(d) The Recorder of Deeds may convert paper documents accepted for recording into electronic form. The Recorder of Deeds may convert into electronic form information recorded before the Recorder of Deeds began to record electronic documents.

(e) Any fee, surcharge, or tax that the Recorder of Deeds is authorized to collect may be collected electronically.

(f) The Recorder of Deeds and other officials of a state or a political subdivision thereof, or of the United States, may agree on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(g) Any electronic documents or digitized images accepted by the Recorder of Deeds prior to October 18, 2005, are deemed to be recorded properly and to impart constructive notice.

(h) Any electronic document or digitized image recorded at the Recorder of Deeds shall be deemed recorded as of the date and time of its delivery to the Recorder of Deeds; provided, that the document or digitized image is accepted by the Recorder of Deeds for recordation. The Recorder of Deeds shall maintain a record of time and date of delivery in its index.

(Oct. 18, 2005, D.C. Law 16-25, § 4, 52 DCR 8084.)

Legislative history of Law 16-25. — For Law 16-25, see notes following § 42-1231. tion is based upon § 4 of the Uniform Real Property Electronic Recording Act.

Editor's notes. — Uniform Law: This sec-

§ 42-1234. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Oct. 18, 2005, D.C. Law 16-25, § 5, 52 DCR 8084.)

Legislative history of Law 16-25. — For Law 16-25, see notes following § 42-1231. tion is based upon § 6 of the Uniform Real Property Electronic Recording Act.

Editor's notes. — Uniform Law: This sec-

§ 42-1235. Relation to electronic signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) or section 104 of the Act, or authorize electronic delivery of any of the notices described in 103(b) of the Act. The provisions of this chapter shall be liberally construed as remedial legislation to encourage the use and recording of electronic documents affecting real property in the District of Columbia.

(Oct. 18, 2005, D.C. Law 16-25, § 6, 52 DCR 8084.)

Legislative history of Law 16-25. — For Law 16-25, see notes following § 42-1231. § 7004. Section 103(b), referred to in text, is classified to 15 U.S.C. § 7003(b).

References in text. — Section 101(c) or section 104 of the Act, referred to in text, is classified to 15 U.S.C. § 7001(c) and 15 U.S.C.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Real Property Electronic Recording Act.

CHAPTER 13. RESIDENTIAL REAL PROPERTY SELLER DISCLOSURES.

Sec.	Sec.
42-1301. Applicability and exceptions.	42-1306. Good faith disclosure.
42-1302. Written statement; written indication of compliance.	42-1307. Scope of disclosure.
42-1303. Scope of liability; information prepared by third party.	42-1308. Amendment of disclosure.
42-1304. Change in conditions after delivery.	42-1309. Method of delivery.
42-1305. Residential disclosure requirements.	42-1310. Failure to comply.
	42-1311. Duty imposed on transferor only.

§ 42-1301. Applicability and exceptions.

(a)(1) The provisions of this chapter shall apply only to the transfer or sale of real estate located in the District of Columbia consisting of not less than one nor more than 4 residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, or any other option to purchase.

(2) This chapter shall apply only where the purchaser expresses, in writing, an intent to reside in the property to be transferred.

(b) The provisions of this chapter shall not apply to any of the following:

(1) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance;

(2) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

(3) Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(4) Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(5) Transfers from one cotenant to one or more other co-tenants;

(6) Transfers made to the transferor's spouse, domestic partner, parent, grandparent, child, grandchild or sibling or any combination of the foregoing;

(7) Transfers between spouses or domestic partners resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

(8) Transfers or exchanges to or from any governmental entity; and

(9) Transfers made by a person of newly constructed residential property that has not been inhabited.

(c) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Apr. 20, 1999, D.C. Law 12-263, § 2, 46 DCR 2111; Sept. 12, 2008, D.C. Law 17-231, § 35, 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 45-951.

Effect of amendments. — D.C. Law 17-231, in subsec. (b)(6), substituted “spouse, domestic partner” for “spouse”; in subsec. (b)(7), substituted “spouses or domestic partners” for “spouses”; and added subsec. (c).

Legislative history of Law 12-263. — Law 12-263, the “Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998,” was introduced in Council and assigned Bill No. 12-648, which was referred to the Committee on Con-

sumer and Regulatory Affairs. The Bill was adopted on first, amended first and second readings on October 6 1998, November 10, 1998, and December 1, 1998, respectively. Bill 12-648 was vetoed by the Mayor on December 29, 1998, and the Council overrode the veto on January 5, 1999, whereupon the Bill was assigned Act No. 12-625 and transmitted to both Houses of Congress for its review. D.C. Law 12-263 became effective on April 20, 1999.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

§ 42-1302. Written statement; written indication of compliance.

(a) The transferor of any real property described in § 42-1301(a) shall deliver to the prospective transferee a real property disclosure statement on a form to be approved by the Mayor. The written statement shall be signed by the transferor and shall be delivered to the prospective transferee within the following time limits:

(1) In the case of a sale, before or at the time the prospective transferee executes a purchase agreement with the transferor; or

(2) In the case of a sale by an installment sales contract where a binding purchase agreement has not been executed, or in the case of a lease together with an option to purchase, before or at the time the prospective transferee executes the installment sales contract, or lease, as the case may be, with the transferor.

(b) With respect to any transfer subject to subsection (a) of this section, the transferor shall indicate compliance with this chapter either on the purchase agreement, the installment sales contract, the lease with an option to purchase, or any addendum attached to the purchase agreement, contract, or lease with an option to purchase, or on a separate document.

(c) Except as provided in subsection (d) of this section, if any disclosure required to be made by this chapter is delivered after the prospective transferee executes a purchase agreement, installment sales contract, or lease with an option to purchase, the prospective transferee may terminate any of the foregoing by delivering written notice of termination to the transferor not later than 5 calendar days after receipt of the disclosure statement by the prospective transferee, and any deposits made by the transferee to the transferor shall be promptly returned to the transferee.

(d) Notwithstanding the provisions of subsection (c) of this section, the right of a transferee to terminate is waived if not exercised before the earliest of:

(1) The making of a written application to a lender for a mortgage loan or financing, provided that the lender discloses in writing at or before the time application is made that the right to rescind terminates on submission of the application;

(2) Settlement or the date of occupancy by the purchaser in the event of a sale; or

(3) Occupancy in the event of a lease with option to purchase.

(Apr. 20, 1999, D.C. Law 12-263, § 3, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-952.

Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see Historical and Statutory Notes following § 42-1301.

Delegation of Authority. — Delegation of

authority under D.C. Act 12-625, the “Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998”, see Mayor’s Order 99-82, May 21, 1999 (46 DCR 5439).

§ 42-1303. Scope of liability; information prepared by third party.

(a) The transferor is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this chapter if the error, inaccuracy, or omission was not within the actual personal knowledge of the transferor, or was based entirely on information provided by public agencies or provided by other persons specified in subsection (c) of this section and ordinary care was exercised in transmitting the information. It is not a violation of this chapter if the transferor fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be discovered only by a person with expertise in a science or trade beyond the knowledge of the transferor.

(b) The delivery to a prospective transferee of any information required by this chapter to be disclosed to a prospective transferee by a public agency or other person specified in subsection (c) of this section shall be considered to comply with the requirements of this chapter and relieves the transferor of any further duty or liability under this chapter with respect to that item of information, unless the transferor has actual personal knowledge of a known defect or condition that contradicts the information provided by the public agency or the person specified in subsection (c) of this section and knowingly fails to disclose such known defect or condition.

(c) The delivery to a prospective transferee of a report or opinion prepared by a licensed professional engineer, professional surveyor, home inspector, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional’s license or expertise, is sufficient compliance for application of the exemption provided in subsection (a) of this section if the information is provided upon the request of the prospective transferee (provided that nothing in this chapter shall be construed as imposing on the transferor any obligation to comply with the request), unless the transferor has actual personal knowledge of a known defect or condition that contradicts the information contained in the report or opinion and knowingly fails to disclose the known defect or condition. In responding to a request by a prospective transferee, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of § 42-1305 and, if so, shall indicate the required

disclosures, or parts of disclosures, to which the information being furnished applies. In furnishing the statement, the expert is not responsible for any items of information other than those expressly set forth in the statement.

(Apr. 20, 1999, D.C. Law 12-263, § 4, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-953. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1304. Change in conditions after delivery.

If information disclosed in accordance with this chapter becomes inaccurate as a result of any action, occurrence, or agreement after the delivery of the required disclosures, the resulting inaccuracy does not constitute a violation of this chapter. If at the time the disclosures are required to be made, an item of information required to be disclosed under this chapter is unknown or unavailable to the transferor, the transferor may comply with this chapter by advising a prospective purchaser of the fact that the information is unknown. The information provided to a prospective purchaser pursuant to this chapter shall be based upon the information available and actually known to the transferor.

(Apr. 20, 1999, D.C. Law 12-263, § 5, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-954. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1305. Residential disclosure requirements.

The residential real property disclosure statement approved by the Mayor shall contain the following:

(1) A list of actually known defects or information concerning the following:

- (A) Water and sewer systems;
- (B) Insulation;
- (C) Structural systems, including roof, walls, floors, foundation, and basement;
- (D) Plumbing, electrical, heating, and air conditioning systems;
- (E) History of infestation by rodents or wood-boring insects, if any;
- (F) Appliances;
- (G) Alarm system and intercom system; and
- (H) Garage door opener and remote control; and
- (I) Fixtures; and

(2) Any other information required by the Mayor to be published by rulemaking, provided that nothing in this chapter or in any rules shall be deemed to modify or amend § 42-1755(f) [repealed].

(Apr. 20, 1999, D.C. Law 12-263, § 6, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-956. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1306. Good faith disclosure.

Each disclosure required by this chapter shall be made in good faith. For the purposes of this chapter, “good faith” means honesty in fact in the making of the disclosure.

(Apr. 20, 1999, D.C. Law 12-263, § 7, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-956. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1307. Scope of disclosure.

The specification of items for disclosure in this chapter does not limit or abridge any obligation for disclosure created by any other provision of statutory law regarding fraud, misrepresentation, or deceit in transfer transactions. If the transferor provides to the prospective transferee the residential real property disclosure statement required by this chapter (or the other information described § 42-1303(b) or (c)), any licensed agent of the transferor shall be deemed to have complied with the licensee’s obligations under § 42-1703 to disclose to a customer material adverse facts concerning the physical condition of the property.

(Apr. 20, 1999, D.C. Law 12-263, § 8, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-957. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1308. Amendment of disclosure.

Any disclosure made pursuant to this chapter may be amended in writing by the transferor, but the amendment is subject to the requirements of § 42-1302.

(Apr. 20, 1999, D.C. Law 12-263, § 9, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-958. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1309. Method of delivery.

Delivery of a disclosure statement required by this chapter shall be by personal delivery, facsimile delivery, or by registered mail to the prospective transferee. Execution by the transferor of a facsimile counterpart of the disclosure statement shall be considered to be execution of the original.

(Apr. 20, 1999, D.C. Law 12-263, § 10, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-959. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1310. Failure to comply.

A transfer subject to this chapter shall not be invalidated solely because of the failure of any person to comply with any provisions of this chapter.

(Apr. 20, 1999, D.C. Law 12-263, § 11, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-960. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

§ 42-1311. Duty imposed on transferor only.

The duty to comply with this chapter is imposed on a transferor, and not on any real estate agent or real estate broker of a transferor. A real estate agent or real estate broker of a transferor shall not be liable for any error, inaccuracy or omission in any information delivered to any prospective transferee, or for any failure of a transferor to deliver any information or a real property disclosure statement to the prospective transferee, or for any violation of this chapter by a transferor, unless such real estate agent or real estate broker knowingly acts in concert with such transferor to commit fraud.

(Apr. 20, 1999, D.C. Law 12-263, § 12, 46 DCR 2111.)

Prior Codifications. — 1981 Ed., § 45-961. torical and Statutory Notes following § 42-1301.
Legislative history of Law 12-263. — For legislative history of D.C. Law 12-263, see His-

CHAPTER 14. SALE OF CONTINGENT AND LIMITED INTERESTS.

Sec.

42-1401. Sale of life estate and contingent remainder in issue upon application of life tenant.

42-1402. Application for sale by verified bill; contents; parties.

Sec.

42-1403. Proceeds of sale held by court and treated as real estate.

42-1404. Sale of limited estate and future interest generally; court decree; binding effect thereof.

§ 42-1401. Sale of life estate and contingent remainder in issue upon application of life tenant.

Where real estate is limited to 1 or more for life, with a contingent limitation over to such issue of 1 or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple.

(Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 97.)

Prior Codifications. — 1981 Ed., § 45-1001. 1973 Ed., § 45-1101.

CASE NOTES

In general.

The validity of a decree for the sale of an infant's real estate for purposes of reinvestment, and of the order appointing a trustee to make the sale, and of the bond reciting the due appointment of such trustee, executed to secure the faithful discharge by him of his duties, is not open to question by one who voluntarily became a surety upon the bond, thereby enabling his principal to obtain the proceeds of the sale. U.S. to Use of Hine v. Morse, 31 S.Ct. 37, 1910 U.S. LEXIS 2044 (U.S.Dist.Col. 1910).

A decree of the Supreme Court of the District of Columbia for the sale of an infant's real

property for purposes of reinvestment, made with jurisdiction over the res and of the parties, is not open to collateral attack, even though the court erred in holding that a case had been made, either under its inherent power as a court of equity, or its statutory authority. U.S. to Use of Hine v. Morse, 31 S.Ct. 37, 1910 U.S. LEXIS 2044 (U.S.Dist.Col. 1910).

Court cannot order sale of real estate devised for life with remainder over, where will specifically forbids sale or incumbrance by trustee during such period. Code, §§ 97, 100 (D.C. Code 1929, T. 25, §§ 421, 424). Simon v. Simon, 26 F.2d 530, 1928 U.S. App. LEXIS 3708 (1928).

§ 42-1402. Application for sale by verified bill; contents; parties.

Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of 14 years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem.

(Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 98.)

Prior Codifications. — 1981 Ed., § 45-1002. 1973 Ed., § 45-1102.

§ 42-1403. Proceeds of sale held by court and treated as real estate.

The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will.

(Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 99.)

Prior Codifications. — 1981 Ed., § 45-1003. 1973 Ed., § 45-1103.

§ 42-1404. Sale of limited estate and future interest generally; court decree; binding effect thereof.

Wherever 1 or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim, or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created.

(Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 100.)

Prior Codifications. — 1981 Ed., § 45-1004. 1973 Ed., § 45-1104.

CASE NOTES

In general.

Court cannot order sale of real estate devised for life with remainder over, where will specifically forbids sale or incumbrance by trustee

during such period. Code, §§ 97, 100 (D.C. Code 1929, T. 25, §§ 421, 424). *Simon v. Simon*, 26 F.2d 530, 1928 U.S. App. LEXIS 3708 (1928).

CHAPTER 15.. USES AND TRUSTS.

Sec.

42-1501. Legal estate in cestui que use; excep-
tion.

42-1502. Where several are jointly seized of
lands to use of any so seized, latter
deemed to have possession and
seizin alone.

Sec.

42-1503. Effect of purchase for value without
notice of trust; where express
trust not declared in conveyance.

§ 42-1501. Legal estate in cestui que use; exception.

Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed.

(Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1617.)

Cross references. — Fraudulent convey-
ances, see §§ 28-3101, 28-3103.

Prior Codifications. — 1981 Ed., § 45-
1101.

1973 Ed., § 45-1201.

CASE NOTES

In general.

If testamentary trustee has duties to per-
form, trust is active and trustee will take title
and administer and manage properties, but if
trustee has no duties other than to convey title,
trust is passive and title vests in devisees. D.C.
Code 1951, § 45-1201. *Liberty Nat. Bank of
Washington v. Smoot*, 135 F.Supp. 654, 1955
U.S. Dist. LEXIS 2630 (D.D.C.1955).

Where, at time of his death, testator was sole
owner of five parcels of real property and also
owned an undivided one-third interest in a
great number of other parcels of real property
and properties had various types of improve-
ments, in various states of repair, and would be
most difficult to dispose of in an orderly fashion,
will clause, directing executor-trustee to dis-
tribute to the beneficiaries, devisees and lega-
tees any property of any character of which
testator died the owner, required fiduciary to

undertake sufficiently active duties so that fi-
diciary would have to take title to real estate
and proceed with its distribution as will di-
rected. D.C. Code 1951, § 45-1201. *Liberty Nat.
Bank of Washington v. Smoot*, 135 F.Supp. 654,
1955 U.S. Dist. LEXIS 2630 (D.D.C.1955).

Even though assignee of expired lease in
taking title to property acted solely as agent or
straw party for realty corporation, which was
seeking to acquire a number of parcels of real
estate in neighborhood, assignee was entitled
to bring possessory action against lessee, who
was hold-over tenant, since lessee could assert
any right he had to possession in suit by as-
signee in same manner that he could have
asserted such right if corporation had brought
suit. D.C. Code 1951, §§ 45-820, 45-904, 45-
1201. *Lake v. Angelo*, 163 A.2d 611, 1960 D.C.
App. LEXIS 243 (Cr.App. 1960).

§ 42-1502. Where several are jointly seized of lands to use of any so seized, latter deemed to have possession and seizin alone.

Where divers and many persons be, or hereafter shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, in every such case those person or persons which have or hereafter shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, and other hereditaments, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments; saving and reserving to all and singular persons, and bodies politic, their heirs, and successors, other than those person or persons which be seized, or hereafter shall be seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had before the year 1535.

(27 Hen. 8, ch. 10, § 2, 1535; Kilty's Rep. 231; Alex. Br. Stat. 294; Comp. Stat. D.C., 537, § 2.)

Prior Codifications. — 1981 Ed., § 45-1102. 1973 Ed., § 45-1202.

§ 42-1503. Effect of purchase for value without notice of trust; where express trust not declared in conveyance.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust.

(Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1618.)

Prior Codifications. — 1981 Ed., § 45-1103. 1973 Ed., § 45-1203.

CASE NOTES

ANALYSIS

Bona fide purchasers.
Receiverships.
Valuable consideration defined.

Bona fide purchasers.

Party can be "bona fide purchaser for valuable consideration," within meaning of District of Columbia recording statute, only if such consideration is actually paid before purchaser

learns of prior unrecorded interest. D.C. Code 1981, § 45-1103. *Jarvis v. Technical Land* (In re Technical Land), 172 B.R. 429, 1994 Bankr. LEXIS 1544 (1994), affirmed by 175 B.R. 792, 1994 U.S. Dist. LEXIS 18940, 7 4th Cir. & D.C. Bankr. Ct. Rep. 191 (D.D.C. 1994).

Receiverships.

Receivership is not to be equated with "resulting trust," under District of Columbia statute providing that no implied or resulting trust shall defeat title of purchaser for valuable consideration and without notice of such trust. D.C. Code 1981, § 45-1103. *Jarvis v. Technical Land* (In re Technical Land), 172 B.R. 429, 1994 Bankr. LEXIS 1544 (1994), affirmed by 175 B.R. 792, 1994 U.S. Dist. LEXIS 18940, 7 4th Cir. & D.C. Bankr. Ct. Rep. 191 (D.D.C. 1994).

Valuable consideration defined.

Even assuming that District of Columbia recording statute protects bona fide purchasers of property which has been placed in custody of receiver, parties who purchased property at execution sale did not pay "valuable consideration," within meaning of recording statute, to the extent that they paid only a nominal \$1 purchase price. D.C. Code 1981, § 45-1103. *Jarvis v. Technical Land* (In re Technical Land), 172 B.R. 429, 1994 Bankr. LEXIS 1544 (1994), affirmed by 175 B.R. 792, 1994 U.S. Dist.

LEXIS 18940, 7 4th Cir. & D.C. Bankr. Ct. Rep. 191 (D.D.C. 1994).

Mere fact that judgment creditors purchased property at execution sale subject to any valid liens thereon did not mean that they had paid "valuable consideration" for property, within meaning of District of Columbia recording statute, to the extent that judgment creditors had made no payment on preexisting liens until they became aware property was in custody of receiver. D.C. Code 1981, § 45-1103. *Jarvis v. Technical Land* (In re Technical Land), 172 B.R. 429, 1994 Bankr. LEXIS 1544 (1994), affirmed by 175 B.R. 792, 1994 U.S. Dist. LEXIS 18940, 7 4th Cir. & D.C. Bankr. Ct. Rep. 191 (D.D.C. 1994).

"Valuable consideration," such as purchaser must pay in order to take title, under District of Columbia recording statute, superior to that enjoyed by resulting trust beneficiaries, is not to be equated with legally sufficient consideration, which can be purely nominal; status of bona fide purchaser will not be accorded to one who pays only a nominal amount, risking no substantial sum on purchase. D.C. Code 1981, § 45-1103. *Jarvis v. Technical Land* (In re Technical Land), 172 B.R. 429, 1994 Bankr. LEXIS 1544 (1994), affirmed by 175 B.R. 792, 1994 U.S. Dist. LEXIS 18940, 7 4th Cir. & D.C. Bankr. Ct. Rep. 191 (D.D.C. 1994).

CHAPTER 16. WASTE.

Sec.	Sec.
42-1601. Writ of waste; lease forfeited for waste and lessee to pay treble damages.	waste although tenant's interest assigned to another; applicability of provisions.
42-1602. Waste prohibited without written license; damages; amercement.	42-1604. Joint tenant or tenant in common against cotenant.
42-1603. Reversioner may maintain writ of	

§ 42-1601. Writ of waste; lease forfeited for waste and lessee to pay treble damages.

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years; and he which shall be attainted of waste, shall lease the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at.

(6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D.C., 319, § 21; Oct. 1, 1976, D.C. Law 1-87, § 41, 23 DCR 2544; Apr. 27, 2001, D.C. Law 13-292, § 804, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 45-1201.

1973 Ed., § 45-1301.

Effect of amendments. — D.C. Law 13-292 deleted “, or in dower” following “for term of years”.

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned

Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 42-1207.

CASE NOTES

In general.

Breach of covenant to make repairs by failure to replace broken hinge of gate, to reset a fallen fence, to mend broken plaster, or to repaper walls, supplemented by acts evidencing a wanton disregard of landlord's rights, authorized a finding that “waste” has been committed, notwithstanding that each breach of itself might have been too inconsequential to justify a forfeiture of tenant's term. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

The covenant not to commit, or suffer waste to be committed, is implied in every lease. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

Acts constituting a breach of an express covenant, which are of such a nature that when followed by other instances of abuse of the property by the tenant result in injury to the

reversion, constitute “waste”. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

Whether a tenant by breach of covenant to make repairs has committed waste is a question of fact for trial court. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

Where breach of an express covenant followed by other instances of abuse to property by tenant results in injury to reversion, the waiver implied by acceptance of rent and failure to terminate tenancy upon breach of covenant does not exclude covenant from consideration when issue in action to recover possession is whether conduct of tenant over a period of years justifies finding that waste has been committed. *Klein v. Longo*, 34 A.2d 359, 1943 D.C. App. LEXIS 198 (Cr.App. 1943).

§ 42-1602. Waste prohibited without written license; damages; amercement.

Fermors, during their terms, shall not make waste, sale or exile of house or woods, nor of anything belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage and shall be punished by amercement grievously.

(52 Hen. 3, ch. 23, § 2, 1267; Kilty's Rep. 209; Alex. Br. Stat. 46, 47; Comp. Stat. D.C., 318, § 19.)

Prior Codifications. — 1981 Ed., § 45-1202. 1973 Ed., § 45-1302.

§ 42-1603. Reversioner may maintain writ of waste although tenant's interest assigned to another; applicability of provisions.

Because that diverse people in times past have let their lands and tenements to divers persons, that is to say, some for term of life or of another man's life, and some for term of years, the said tenants have oftentimes let and granted their estate which they had in the same lands and tenements, to many persons, to the intent that they in the reversion, that is to say, their lessors, their heirs, or their assigns, might not have knowledge of their names, and after the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disheritance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estates, in the manner and form above-said, were unpunishable of waste; and also where after the said grant and lease the said first tenants of the said lands and tenements take the profits at the time of the waste done, to their own proper use.

(11 Hen. 6, ch. 5, § 1, 1433; Kilty's Rep. 227; Alex. Br. Stat. 243; Comp. Stat. D.C., 320, § 26.)

Prior Codifications. — 1981 Ed., § 45-1203. 1973 Ed., § 45-1303.

§ 42-1604. Joint tenant or tenant in common against cotenant.

Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of

partition may have said waste charged against the share of the cotenant committing the same.

(Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1622.)

Prior Codifications. — 1981 Ed., § 45-1204. 1973 Ed., § 45-1304.

CASE NOTES

In general.

The term “waste” when applied to a tenant in common means any action which goes to the destruction or permanent injury of the property held in common. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

A tenant in common who is in sole possession of common property has a duty to his cotenant to preserve the property by making all necessary, ordinary repairs, but this duty does not extend to extraordinary repairs or the substitution of new structures resulting from normal

decay. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

A cotenant’s duty to repair is limited, in that the costs of the repair must not exceed the income produced by the property or its imputed rental value. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

Plaintiff failed to show that the property’s deteriorated condition was a result of defendant’s inaction. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

SUBTITLE II. BROKERS AND REALTORS.

CHAPTER 17. REAL ESTATE BROKERS' DUTIES.

Subchapter I. General

Sec.

42-1701. Purposes.

42-1702. Definitions.

42-1703. Duties of real estate brokers, salespersons, and property managers.

42-1704. Escrow accounts.

42-1705. Written listing contract required.

42-1706. Establishment of Real Estate Guaranty and Education Fund; Mayor

Sec.

to determine sum for deposit into Fund.

42-1707. Applications for payments from Fund; maximum payment; management of Fund.

42-1708. Additional criminal penalties.

42-1709. Savings clause.

Subchapter II. Repealed Provisions.

42-1721 to 42-1764. [Repealed].

Subchapter I. General.

§ 42-1701. Purposes.

The purposes of this subchapter are to protect the public against incompetence, fraud and deception in real estate transactions; to establish a Real Estate Guaranty and Educational Fund to compensate victims of unlawful real estate practices; and for other purposes.

(Mar. 10, 1983, D.C. Law 4-209, § 2, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(a), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(a), 46 DCR 3142.)

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1921.

Legislative history of Law 4-209. — Law 4-209, the "District of Columbia Real Estate Licensure Act of 1982," was introduced in Council and assigned Bill No. 4-230, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 45-1929.1.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No.

12-615, and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Editor's notes. — Applicability of chapter to District of Columbia Housing Authority: Section 13 of D.C. Law 10-243, the District of Columbia Housing Authority Act of 1994, provided:

Applicability of chapter to District of Columbia Housing Authority: (a) The provisions of Chapter 17 of Title 42 shall not apply to the property managers of housing properties within the jurisdiction of the Authority. The activities of property managers of housing properties shall be regulated by the applicable statutes, rules, and regulations of the United States in effect on March 21, 1995.

"(b) Execution or other judicial process shall not issue against the real property of the Authority nor shall any judgment against the Authority be a charge or lien upon its real property. This section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage on property of the Authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees, and revenues."

CASE NOTES

Construction and application.

Even if Brokerage Act had been violated because company affiliated with limited partnership's sole managing general partner did not hold a real estate brokerage license but had been retained under a consulting agreement to sell partnership's realty, there was no breach of partnership agreement's requirement that managing partner's self-dealing be conducted on "on terms and standards for performance customarily provided in the [District of Columbia]," where the partners agreed that the managing partner was qualified to negotiate the sales transaction. *Marmac Inv. Co. v. Wolpe*, 759 A.2d 620, 2000 D.C. App. LEXIS 227 (2000).

Equities did not favor requiring company affiliated with limited partnership's sole managing general partner to return fee it earned under consulting agreement for sale of partnership's realty, even if Brokerage Act had been

violated because company had not held a real estate brokerage license, where the majority of partners had approved of the fee amount and the partnership received valuable services performed efficaciously by the managing partner. *Marmac Inv. Co. v. Wolpe*, 759 A.2d 620, 2000 D.C. App. LEXIS 227 (2000).

Real Estate Licensure Act is designed to chill unlicensed practice by denying transgressors any recovery regardless of services they provide or status of their client. D.C. Code 1981, § 45-1921 et seq. *RDP Dev. Corp. v. Schwartz*, 657 A.2d 301, 1995 D.C. App. LEXIS 85 (1995).

Given broad remedial objectives of Real Estate Licensure Act, appellate court will construe it generously and will not create exception to legislative mandate which would exempt from Act's coverage most lucrative areas of brokerage practice. D.C. Code 1981, § 45-1921 et seq. *RDP Dev. Corp. v. Schwartz*, 657 A.2d 301, 1995 D.C. App. LEXIS 85 (1995).

§ 42-1702. Definitions.

For purposes of this subchapter:

(1) The term "advance fee" means any fee, commission, or other valuable consideration contracted for, claimed, demanded, charged, received, or collected prior to the listing, advertisement, or offer to sell or lease real estate, paid or offered to be paid for the purpose of promoting the sale or lease of real estate, or for referral to any real estate broker, salesperson, or both, other than by newspaper of general circulation.

(1A) The term "agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Nothing in this subchapter shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this subchapter. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage relationship. A real estate licensee who enters into a brokerage relationship based upon a written contract which specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the contract, and such real estate licensee and its employees shall have no obligations under § 42-1703(a) through (e).

(1B) Repealed.

(2) Repealed.

(2A) The term "brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord

ready, able, and willing to sell, buy, option, exchange, or rent real estate on behalf of a client, or for the purposes of managing real estate on behalf of a client.

(3) Repealed.

(3A) The term “client” means a person who has entered into a brokerage relationship with a licensee.

(4) The term “Board” means the Board of Real Estate established by the Non-Health Related Occupations and Professions Licensure Act of 1998 [Title I of D.C. Law 12-261, codified as § 47-2853.01 et seq.].

(4A) The term “common source information company” means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

(5) The term “Council” means the Council of the District of Columbia.

(5A) The term “customer” means a person who has not entered into a brokerage relationship with a licensee, but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.

(5B) The term “designated agent” or “designated representative” means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction.

(6) The term “District” means the District of Columbia.

(6A) The term “dual agent” or “dual representative” means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.

(6B) The term “escrow funds” means earnest money deposits for purchase of residential and commercial property and security deposits for rental of residential and commercial property.

(7) The term “Fund” means the Real Estate Guaranty and Education Fund established by § 42-1706.

(7A) The term “licensee” means, respectively, real estate brokers, salespersons and property managers, as defined in paragraphs (10) (property manager), (12) (real estate broker), and (13) (real estate salesperson) of this section, provided that nothing in § 42-1703 shall be deemed to modify the licensure requirements otherwise set forth in this subchapter.

(7B) The term “material fact” means information that, if known, would be likely to induce a reasonable person to enter into or not enter into or consummate a real estate transaction.

(8) The term “Mayor” means the Mayor of the District of Columbia or the Mayor’s authorized representative.

(8A) The term “ministerial acts” means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee’s own judgment.

(9) The term “person” means any individual, partnership, association, unincorporated business, firm, business trust, or corporation.

(10) Repealed.

(10A) Repealed.

(10B) The term “property management” means leasing, renting or offering to lease or rent, managing, marketing, and the overall operation and maintenance of real estate. The term “property management” includes the physical, administrative, and fiscal management of any real property serviced by a licensee, or his or her employee or agent.

(10C) The term “psychological impact” means any fact or suspicion with respect to circumstances, other than the physical condition of the property, that creates a fear, belief, or mental condition.

(11) The term “real estate” means condominiums, leaseholds, time sharing and any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether located in the District or elsewhere. The term “real estate” includes any share or membership in a cooperative organized pursuant to Chapter 9 of Title 29, to engage in activities relating to real estate, even though the shares or membership may be deemed to be securities or personal property for purposes of such chapter.

(12) Repealed.

(12A) The term “real estate franchise” means any real estate franchise brokerage firm practicing in the District which does not own or operate individual offices directly, but licenses its trade name, reputation, operation procedure, and referral services to independently owned and operated brokerage firms.

(13) Repealed.

(13A) Repealed.

(13B) The term “standard agent” means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in this section.

(14) The term “written listing contract” means a contract between a broker and an owner in which the owner grants to the broker the right to find a purchaser for a designated property at the price and terms the owner agrees to accept, and the broker, for a fee, commission, or other valuable consideration, promises to make a reasonable effort to obtain a purchaser for the term of the contract.

(Mar. 10, 1983, D.C. Law 4-209, § 3, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(b), 31 DCR 4023; Mar. 6, 1991, D.C. Law 8-209, § 2(a), 37 DCR 8464; Feb. 5, 1994, D.C. Law 10-68, § 38(a), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-242, § 2(a), 44 DCR 1128; Mar. 24, 1998, D.C. Law 12-81, § 55(a), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-261, § 1233(b), 46 DCR 3142; Apr. 20, 1999, D.C. Law 12-264, §§ 51, 57(f), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 157(a), 47 DCR 520; July 2, 2011, D.C. Law 18-378, § 3(gg), 58)

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1922.

Effect of amendments. — D.C. Law 13-91

validated a previously made technical amendment in subsec. (b)(1).

D.C. Law 18-378, in par. (11), validated a previously made technical correction.

Legislative history of Law 4-209. — For

legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 8-209. — Law 8-209, the “Real Estate Transaction Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-514, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 13, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-284 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 11-242. — Law 11-242, the “Real Estate Licensure Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-620, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-502 and transmitted to both Houses of Congress for its review. D.C. Law 11-242 became effective on April 9, 1997.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1997,”

was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 42-1218.

References in text. — The “Non-Health Related Occupations and Professions Licensure Act of 1998,” referenced in (4), is title I of D.C. Law 12-261.

CASE NOTES

ANALYSIS

In general.

Written listing agreement.

In general.

Purported listing agreement for purchase of building on behalf of foreign governments violated District of Columbia Real Estate Licensure Act of 1982 due to lack of specific price term and lack of definite termination date; thus, listing agreement was void and did not entitle broker to recover commission from ultimate sale of building to foreign embassy which had been procured by embassy’s actual exclusive agent. D.C. Code 1981, §§ 45-1922(14), 45-1936(b)(16), 45-1945. *Hamady v. Trammel*

Crow Asset Co., 824 F. Supp. 580, 1993 U.S. Dist. LEXIS 8454 (1993), affirmed without opinion by 28 F.3d 1209, 1994 U.S. App. LEXIS 24731 (4th Cir. Va. 1994).

District of Columbia Real Estate Licensure Act does not distinguish between “business chance brokers” and “real estate brokers,” does not require an analysis of whether a transaction was a “business opportunity” or a “real estate transaction,” and does not examine whether real property was a “substantial aspect” of the transaction. D.C. Code 1981, §§ 45-1921 et seq., 45-1926, 45-1926(c); § 45-1922 (repealed). *Kassatly v. Yazbeck*, 739 F. Supp. 651, 1990 U.S. Dist. LEXIS 8684 (1990).

Under District of Columbia Real Estate Licensure Act, “business chance broker” is “real

estate broker" barred from bringing lawsuit to collect commission if unlicensed at time of transaction. D.C. Code 1981, §§ 45-1921 et seq., 45-1926, 45-1926(c); § 45-1922 (repealed). *Kassatly v. Yazbeck*, 739 F. Supp. 651, 1990 U.S. Dist. LEXIS 8684 (1990).

Development corporation acted as "real estate broker" when it performed under consulting agreement by negotiating to lease client's property, and thus it was barred by Real Estate Licensure Act, due to its unlicensed status, from collecting fees, considering additionally that contract was to be paid on commission basis, contingent upon success in securing

lease, with amount tied directly to value of lease. D.C. Code 1981, §§ 45-1922(12)(A), 45-1926(c). *RDP Dev. Corp. v. Schwartz*, 657 A.2d 301, 1995 D.C. App. LEXIS 85 (1995).

Written listing agreement.

Letter from commercial real estate services company to developers did not contemplate the sale or purchase of developers' property, and thus, it did not amount to a written listing agreement that would have entitled company to a commission on the sale of the property. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

§ 42-1703. Duties of real estate brokers, salespersons, and property managers.

(a) Licensees engaged by sellers. —

(1) A licensee engaged by a seller shall:

(A) Perform in accordance with the terms of the brokerage relationship;

(B) Promote the interests of the seller by:

(i) Seeking a sale at the price and terms agreed upon in the brokerage relationship or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage relationship or as the contract of sale so provides;

(ii) Presenting in a timely manner all written offers or counteroffers to and from the seller, even when the property is already subject to a contract of sale;

(iii) Disclosing to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

(iv) Accounting for in a timely manner all money and property received in which the seller has or may have an interest;

(C) Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;

(D) Exercise ordinary care; and

(E) Comply with all requirements of this section, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this section.

(2) Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. A licensee shall not be liable to a buyer for providing false information to the buyer if the false information was provided to the licensee by the seller and the licensee did not have actual knowledge that the information was false or act in reckless disregard of the truth. No cause of action shall arise against any

licensee for revealing information as required by this section or applicable law. Nothing in this section shall modify or limit in any way the provisions of § 42-1755(f) [repealed].

(3) A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a buyer or potential buyer by performing ministerial acts. Performing such ministerial acts that are not inconsistent with this subsection (a) of this section shall not be construed to violate the licensee's brokerage relationship with the seller unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such buyer or potential buyer.

(4) A licensee engaged by a seller does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.

(5) Licensees shall disclose brokerage relationships pursuant to the provisions of this section.

(b) *Licensees engaged by buyers.* —

(1) A licensee engaged by a buyer shall:

(A) Perform in accordance with the terms of the brokerage relationship;

(B) Promote the interests of the buyer by:

(i) Seeking a property at a price and with terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;

(ii) Presenting in a timely manner all written offers or counteroffers to and from the buyer, even when the buyer is already a party to a contract to purchase property;

(iii) Disclosing to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge, provided that nothing in this section shall modify or limit in any way the provisions of § 42-1755(f) [repealed]; and

(iv) Accounting for in a timely manner all money and property received in which the buyer has or may have an interest;

(C) Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;

(D) Exercise ordinary care; and

(E) Comply with all requirements of this section, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this section.

(2) Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this section or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall

disclose to a seller the buyer's intent to occupy the property as a principal residence.

(3) A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection (a) of this section shall not be construed to violate the licensee's brokerage relationship with the buyer unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with the seller.

(4) A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

(5) Licensees shall disclose brokerage relationships pursuant to the provisions of this section.

(c) *Licensees engaged by landlords to lease property.* —

(1) A licensee engaged by a landlord shall:

(A) Perform in accordance with the terms of the brokerage relationship;

(B) Promote the interests of the landlord by:

(i) Seeking a tenant at the price and terms agreed in the brokerage relationship or at a price and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

(ii) Presenting in a timely manner all written offers or counteroffers to and from the landlord, even when the property is already subject to a lease or a letter of intent to lease;

(iii) Disclosing to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

(iv) Accounting for in a timely manner all money and property received in which the landlord has or may have an interest;

(C) Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

(D) Exercise ordinary care; and

(E) Comply with all requirements of this section, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this section.

(2) Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. A

licensee shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the licensee by the landlord and the licensee did not have actual knowledge that the information was false or act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this section or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property. Nothing in this section shall modify or limit in any way the provisions of § 42-1755(f) [repealed].

(3) A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection (a) of this section shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

(4) A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

(5) Licensees shall disclose brokerage relationships pursuant to the provisions of this section.

(d) *Licensees engaged by tenants.* —

(1) A licensee engaged by a tenant shall:

(A) Perform in accordance with the terms of the brokerage relationship;

(B) Promote the interests of the tenant by:

(i) Seeking a lease at a price and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

(ii) Presenting in a timely fashion all written offers or counteroffers to and from the tenant, even when the tenant is already a party to a lease or a letter of intent to lease;

(iii) Disclosing to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge, provided that nothing in this section shall amend or limit in any way the provisions of § 42-1755(f) [repealed]; and

(iv) Accounting for in a timely manner all money and property received in which the tenant has or may have an interest;

(C) Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

(D) Exercise ordinary care; and

(E) Comply with all requirements of this section, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this section.

(2) Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this section or applicable law.

(3) A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection (a) of this section shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.

(4) A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.

(5) Licensees shall disclose brokerage relationships pursuant to the provisions of this section.

(e) *Licensees engaged to manage real estate. —*

(1) A licensee engaged to manage real estate shall:

(A) Perform in accordance with the terms of the property management agreement;

(B) Exercise ordinary care;

(C) Disclose in a timely manner to the owner material facts of which the licensee has actual knowledge concerning the property;

(D) Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the owner consents in writing to the release of such information;

(E) Account for, in a timely manner, all money and property received in which the owner has or may have an interest; and

(F) Comply with all requirements of this section, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this section.

(2) Except as provided in the property management agreement, a licensee engaged to manage real estate does not breach any duty or obligation to the owner by representing other owners in the management of other properties.

(3) A licensee may also represent the owner as seller or landlord if they enter into a brokerage relationship that so provides; in which case, the licensee shall disclose such brokerage relationships pursuant to the provisions of this section.

(f) *Preconditions to brokerage relationship. —*

Prior to entering into any brokerage relationship provided for in this section,

a licensee shall advise the prospective client of the type of brokerage relationship proposed by the broker, and the broker's compensation, and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.

(g) *Commencement and termination of brokerage relationships.* —

(1) The brokerage relationships set forth in this section shall commence at the time that a client engages a licensee and shall continue until (A) completion of performance in accordance with the brokerage relationship, or (B) the earlier of (i) any date of expiration agreed upon by the parties as part of the brokerage relationship or in any amendments thereto, (ii) any mutually agreed upon termination of the relationship, (iii) a default by any party under the terms of the brokerage relationship, or (iv) a termination as set forth in subsection (i)(4) of this section.

(2) Brokerage relationships shall have a definite termination date; however, if a brokerage relationship does not specify a definite termination date, the brokerage relationship shall terminate 90 days after the date the brokerage relationship was entered into.

(3) Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage relationship, except to account for all moneys and property relating to the brokerage relationship, and keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.

(h) *Disclosure of brokerage relationship.* —

(1) Upon having a substantive discussion about a specific property or properties with an actual or prospective buyer or seller who is not the client of the licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in subsection (i) of this section, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

“DISCLOSURE OF BROKERAGE RELATIONSHIP

“The undersigned do hereby acknowledge disclosure that:

“The licensee _____

Name of Firm

represents the following party in a real estate transaction:

_____ Seller(s) or _____ Buyer(s)

_____ Landlord(s) or	_____ Tenant(s)
_____	_____
Date	Name
_____	_____
Date	Name".

(2) A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, disclosure shall be made in writing no later than the signing of lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily residential units for lease terms of less than 2 months.

(3) If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction.

(4) Copies of any disclosures relative to fully executed purchase contracts shall be kept by the licensee for a period of 3 years as proof of having such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

(i) *Disclosed dual or designated representation authorized.* —

(1) A licensee may act as a dual representative only with the written consent of all clients to the transaction. Such written consent and disclosure of the brokerage relationship as required by this section shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

(2) Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

"DISCLOSURE OF DUAL REPRESENTATION

"The undersigned do hereby acknowledge disclosure that:

"The licensee _____

(Name of Broker, Firm, Salesperson or Property Manager as applicable) represents more than one party in this real estate transaction as indicated below: _____ Seller(s) and Buyer(s) _____ Landlord(s) and Tenant(s).

"The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by § 45-1936(f), to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

Date	Name (One Party)
Date	Name (One Party)
Date	Name (Other Party)
Date	Name (Other Party)".

(3) No cause of action shall arise against a dual representative for making disclosures of brokerage relationships as provided by this section. A dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

(4) In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation, thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction nor to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

(5) A principal or supervising broker may assign different licensees affiliated with the broker as designated representatives to represent different clients in the same transaction to the exclusion of all other licensees in the firm. Use of such designated representatives shall not constitute dual representation if a designated representative is not representing more than one client in a particular real estate transaction; however, the principal or broker who is supervising the transaction shall be considered a dual representative as provided in this article. Designated representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.

(6) Use of designated representatives in a real estate transaction shall be disclosed in accordance with the provisions of this section. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

“DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

“The undersigned do hereby acknowledge disclosure that:

“The licensee _____

(Name of Broker and Firm)

represents more than one party in this real estate transaction as indicated below:

_____ Seller(s) and Buyer(s)
 _____ Landlord(s) and Tenant(s).

"The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by the Real Estate Licensure Amendment Act of 1996 to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

"The principal or supervising broker has assigned _____ to act as Designated Representative (Licensee/Sales Associate) for the one party as indicated below:

_____ Seller(s) or _____ Buyer(s)
 _____ Landlord(s) or _____ Tenant(s).

and

_____ to act as Designated Representative (Licensee/Sales Associate) for the one party as indicated below:

_____ Seller(s) or _____ Buyer(s)
 _____ Landlord(s) or _____ Tenant(s)

_____ Date _____ Name (Other Party)

_____ Date _____ Name (Other Party)

_____ Date _____ Name (Other Party)

_____ Date _____ Name (Other Party)".

(j) *Compensation shall not imply brokerage relationship.* — The payment or promise of payment or compensation to a real estate broker or property manager does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.

(k) *Brokerage relationship not created by using common source information company.* — No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord, or other licensee solely by reason of using a common source information company.

(l) *Liability; knowledge not to be imputed.* —

(1) A client is not liable for a misrepresentation made by a licensee in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or the negligence, gross negligence, or intentional acts of any property manager, broker, or broker's licensee.

(2) A licensee who has a brokerage relationship with a client and who engages another licensee to assist in providing brokerage services to such

client shall not be liable for a misrepresentation made by the other licensee, unless the licensee knew or should have known of the other licensee's misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or the negligence, gross negligence, or intentional acts of the assisting licensee or assisting licensee's licensee.

(3) Clients and licensees shall be deemed to possess actual knowledge and information only. Knowledge or information between or among clients and licensees shall not be imputed.

(4) Nothing in this section shall limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices.

(5) Except as expressly set forth in this section, nothing in this section shall affect a person's right to rescind a real estate transaction or limit the liability of a client for the misrepresentation, negligence, gross negligence, or intentional acts of such client in connection with a real estate transaction, or a licensee for the misrepresentation, negligence, gross negligence, or intentional acts of such licensee in connection with a real estate transaction.

(m) *Commission regulations to be consistent.* — Any regulations adopted by the Commission shall be consistent with this section, and any such regulations existing as of April 9, 1997 [shall] be modified to comply with the provisions of this section.

(n) *Common law abrogated.* — The common law of agency relative to brokerage relationships in real estate transactions to the extent inconsistent with this section shall be expressly abrogated.

(o) *Applicability of criminal penalties.* — The criminal penalties provided in § 42-1763, shall not be applicable to violations of this section, which shall be civil and regulatory in nature, provided that the provisions in §§ 42-1708 and 42-1753 through 42-1762, shall be applicable to such violations.

(Mar. 10, 1983, D.C. Law 4-209, § 15a, as added Apr. 9, 1997, D.C. Law 11-242, § 2(b), 44 DCR 1128; Mar. 24, 1998, D.C. Law 12-81, § 55(b), 45 DCR 745.)

Cross references. — Residential real property seller disclosure, fraud, misrepresentation and deceit, see § 42-1307.

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1934.1.

Legislative history of Law 11-242. — For legislative history of D.C. Law 11-242, see Historical and Statutory Notes following § 42-1702.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill

No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — The "Real Estate Licensure Amendment Act of 1996", referred to in the form in (i)(6), is D.C. Law 11-242, which is codified as §§ 42-1702, 42-1703, 42-1705, 42-1707, and 42-1755.

CASE NOTES

ANALYSIS

Breach of fiduciary duty.
In general.

Breach of fiduciary duty.

Conduct of real estate agent breached his fiduciary duties to home vendor and to vendor's brother who held power of attorney from vendor; agent's failure to memorialize in writing the oral listing contract showed a cavalier attitude toward interests of vendor, agent did not obtain written consent from brother for agent's dual representation of purchaser and vendor/brother, sales agreement prepared by agent included highly unusual terms favoring purchaser, e.g., vendor agreed to pay six percent of sales price toward purchaser's costs and agreed to pay purchaser's outstanding consumer debts to one bank and two stores, the amount of which debts were not defined in the agreement,

and agent acted outside of scope of oral contract to sell the home in all-cash transaction that would yield at least \$120,000, i.e., net proceeds were \$70,419.53 after deductions for payments on behalf of purchaser and after accounting for mortgage placed on home. *Jenkins v. Strauss*, 931 A.2d 1026, 2007 D.C. App. LEXIS 552 (2007).

In general.

Real estate broker violated statute prohibiting him from profiting at expense of clients by acting as broker and as one percent participant in partnership formed to acquire property, and not disclosing arrangement with outside party to acquire at discount mortgage on property that was to be paid in full at time of closing. D.C. Code 1981, § 45-1934.1(b). *Ehlen v. Lewis*, 984 F. Supp. 5, 1997 U.S. Dist. LEXIS 17252 (1997).

§ 42-1704. Escrow accounts.

(a) In any real estate transaction in which any person is entrusted, receives, and accepts, or otherwise holds or deposits monies or other trust instruments, of whatever kind or nature, pending consummation or termination of the transaction involved, whether or not the person is required to be licensed under this subchapter, the monies, in the absence of written instructions to the contrary signed by all parties to the transaction, shall be:

(1) Deposited within 7 days in an account in a financial institution located within the District whose deposits are insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or their successors;

(2) Maintained by the escrow holder or trustee as a separate account for monies belonging to others; and

(3)(A) Retained in an account until the transaction involved is consummated or terminated, or until proper written instructions have been received by the escrow holder or trustee directing the withdrawal and disposition of the monies, at which time, all the monies shall be promptly and fully accounted for by the escrow holder or trustee. In no event shall any escrow holder or trustee commingle any of the monies with his or her own funds or use any of the monies for any purpose other than the purpose for which the monies were entrusted to him or her.

(B) The escrow holder or trustee may keep a nominal amount of his or her personal funds in an escrow or trustee account for the purpose of keeping active the escrow or trustee account.

(b)(1) Each escrow holder or trustee shall notify the Commission within 14 calendar days of the name and post office address of the financial institution in which an escrow or trust account has been established and also the name and number of the account.

(2) All escrow holders or trustees shall notify the Commission of all

escrow in trust accounts existing on March 10, 1983, and within 30 calendar days after March 10, 1983.

(c) Each escrow holder or trustee shall give written authorization to the Commission to examine escrow or trust accounts maintained by him or her and shall permit the Commission to examine all books, records, and contracts relating to the escrow accounts. The examinations shall be made at any time the Commission may direct.

(d) An escrow holder or trustee shall not be entitled to any part of the earnest money or other money paid to, or held by, the escrow holder or trustee in connection with any real estate or business transaction as a part or all of his or her commission or fee or for any other purpose until the transaction has been consummated or terminated.

(e) If an escrow or trust is held for 90 days or more, it shall earn interest from the 91st day to the date the transaction is consummated or terminated, at the highest of the following interest rates:

(1) The legal maximum rate under federal law for interest on ordinary savings deposits in commercial banks;

(2) The rate on the account in which the escrow is deposited; or

(3) The rate on the certificate of deposit or other security given as the escrow or trust.

(f) A service fee of not more than \$15 may be subtracted from the interest by the financial institution into which the escrow or trust funds are deposited.

(g) Nothing in this section shall be interpreted to supercede the Security Deposit Act (D.C. Law 1-48; 22 DCR 2825).

(Mar. 10, 1983, D.C. Law 4-209, § 18, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(p), 31 DCR 4023.)

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1937.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see His-

torical and Statutory Notes following § 42-1746.

References in text. — The Federal Savings and Loan Insurance Corporation, referred to in (a)(1), has been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub. L. 101-73, set out as a note under 12 U.S.C. § 1437.

CASE NOTES

In general.

Statute codifying the duty of an escrow holder to deposit entrusted funds in a financial institution does not purport to affect the validity of a real estate contract between a vendor

and a purchaser when the escrow holder fails to comply with the statute. 3511 13th St. Tenants' Ass'n v. 3511 13th St., N.W. Residences, LLC, 922 A.2d 439, 2007 D.C. App. LEXIS 226 (2007).

§ 42-1705. Written listing contract required.

A written listing contract is required in the District for the sale of all real property. A licensee shall not receive payment of a commission in the absence of a written listing agreement.

(Mar. 10, 1983, D.C. Law 4-209, § 26, 30 DCR 390; Apr. 9, 1997, D.C. Law 11-242, § 3(3), 44 DCR 1128.)

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1945.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see His-

torical and Statutory Notes following § 42-1701.

Legislative history of Law 11-242. — For legislative history of D.C. Law 11-242, see Historical and Statutory Notes following § 42-1702.

CASE NOTES

ANALYSIS

Fiduciary duty.

In general.

Sale of property.

Summary judgment.

Third party beneficiaries.

Written listing agreement.

Fiduciary duty.

Real estate agent owed fiduciary duties to home vendor and to vendor's brother who held a power of attorney from vendor, where an enforceable oral contract existed for agent to represent vendor and brother with respect to sale of home, even if agent had not complied with statutory requirement of memorializing the oral contract in a written listing contract. *Jenkins v. Strauss*, 931 A.2d 1026, 2007 D.C. App. LEXIS 552 (2007).

Conduct of real estate agent breached his fiduciary duties to home vendor and to vendor's brother who held power of attorney from vendor; agent's failure to memorialize in writing the oral listing contract showed a cavalier attitude toward interests of vendor, agent did not obtain written consent from brother for agent's dual representation of purchaser and vendor/brother, sales agreement prepared by agent included highly unusual terms favoring purchaser, e.g., vendor agreed to pay six percent of sales price toward purchaser's costs and agreed to pay purchaser's outstanding consumer debts to one bank and two stores, the amount of which debts were not defined in the agreement, and agent acted outside of scope of oral contract to sell the home in all-cash transaction that would yield at least \$120,000, i.e., net proceeds were \$70,419.53 after deductions for payments on behalf of purchaser and after accounting for mortgage placed on home. *Jenkins v. Strauss*, 931 A.2d 1026, 2007 D.C. App. LEXIS 552 (2007).

In general.

Real Estate Licensure Act is not an absolute bar to enforcement of an oral contract to pay real estate commission. D.C. Code 1981, § 45-1945. *Cassidy & Pinkard, Inc. v. Jemal*, 899 F. Supp. 5, 1995 U.S. Dist. LEXIS 13759 (1995).

Under District of Columbia law, purchase agreements, to which the broker is not a party, do not satisfy the written agreement requirement under District of Columbia statute that bars real estate agents from collecting brokerage commissions in the absence of a written listing agreement. In re Capitol Hill Group, 344 B.R. 709, 2006 U.S. Dist. LEXIS 40596 (2006).

Brokerage provided at least some real estate brokerage services to client in exchange for commissions sought, and therefore commission claims were subject to District of Columbia statute that barred real estate agents from collecting brokerage commissions in the absence of written listing agreement, notwithstanding brokerage's contention that it merely provided consulting services, where brokerage solicited at least one buyer and pursued other purchases for client's property. In re Capitol Hill Group, 344 B.R. 709, 2006 U.S. Dist. LEXIS 40596 (2006).

A statute that prevents a licensee from receiving a commission for the sale of real property, in the absence of a written listing agreement, does not necessarily preclude that licensee from receiving compensation for services contracted-for and provided before it was clear that the property would be sold. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

Absence of written contract, by itself, does not bar real estate broker from receiving commission based on unwritten implied-in-fact contract. D.C. Code 1981, § 45-1945. *Moshovitis v. Bank Cos.*, 694 A.2d 64, 1997 D.C. App. LEXIS 84 (1997).

District of Columbia Real Estate Licensure Act does not bar enforcement of unwritten implied-in-fact contracts to pay real estate commission. D.C. Code 1981, § 45-1945. *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 1996 D.C. App. LEXIS 172 (1996).

Sale of property.

Transaction in which title to developers' property was transferred to limited liability company in exchange for company paying off developers' debt associated with property and developer receiving a five percent equity interest in limited liability company constituted a

sale of property for purposes of statute that required a written listing contract for real estate broker to receive a commission; title was transferred for a consideration of value from one entity to another. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

Summary judgment.

Genuine issues of material fact existed as to whether commercial real estate services company was entitled to some form of payment for services it provided to developers to help them refinance debt associated with property, precluding summary judgment in company's action against developers to recover for services rendered in complex real estate transaction. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

Third party beneficiaries.

Under District of Columbia law, brokerage could not assert rights as a third-party beneficiary under purchase agreement between client and purchaser, where it had no independent right to a commission triggered by purchase agreement. *In re Capitol Hill Group*, 344 B.R. 709, 2006 U.S. Dist. LEXIS 40596 (2006).

Written listing agreement.

Purported listing agreement for purchase of building on behalf of foreign governments violated District of Columbia Real Estate Licensure Act of 1982 due to lack of specific price term and lack of definite termination date; thus, listing agreement was void and did not entitle broker to recover commission from ultimate sale of building to foreign embassy which

had been procured by embassy's actual exclusive agent. D.C. Code 1981, §§ 45-1922(14), 45-1936(b)(16), 45-1945. *Hamady v. Trammel Crow Asset Co.*, 824 F. Supp. 580, 1993 U.S. Dist. LEXIS 8454 (1993), affirmed without opinion by 28 F.3d 1209, 1994 U.S. App. LEXIS 24731 (4th Cir. Va. 1994).

Letters setting forth terms of purported consulting and commission agreement between brokerage and client, even when read collectively with purchase agreements between client and purchaser, did not constitute a written agreement between broker and client, for purposes of District of Columbia statute that barred real estate agents from collecting brokerage commissions in the absence of written listing agreement, where letters had not been executed, and brokerage was not a party to purchase agreements. *In re Capitol Hill Group*, 344 B.R. 709, 2006 U.S. Dist. LEXIS 40596 (2006).

Letter from commercial real estate services company to developers did not contemplate the sale or purchase of developers' property, and thus, it did not amount to a written listing agreement that would have entitled company to a commission on the sale of the property. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

If there is no written listing agreement, a licensee may not seek to receive payment of a commission on the sale of real property by alleging that the parties had reached an oral agreement, that a contract was implied in fact, or that he is entitled to compensation for the value of his services. *CB Richard Ellis Real Estate Servs. v. Spitz*, 950 A.2d 704, 2008 D.C. App. LEXIS 269 (2008).

§ 42-1706. Establishment of Real Estate Guaranty and Education Fund; Mayor to determine sum for deposit into Fund.

(a) There is established a Real Estate Guaranty and Education Fund ("Fund").

(b) Except as provided in § 42-1707(k), on or after March 10, 1983, every real estate broker, real estate salesperson and property manager licensed under this subchapter shall, as a condition for renewing his or her license, pay in addition to any other fees required under this subchapter, the sum to be established by the Mayor for deposit into the Fund. On or after March 10, 1983, any person, before receiving an original real estate broker, real estate salesperson, or property manager license, shall pay, in addition to any other fees required under this subchapter, a sum to be established by the Mayor for deposit into the Fund.

(Mar. 10, 1983, D.C. Law 4-209, § 29, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(t), 31 DCR 4023.)

Section references. — This section is referred to in §§ 1-321.02, 6-1406.01, 42-1702, and 42-1707.

Prior Codifications. — 1981 Ed., § 45-1948.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1707. Applications for payments from Fund; maximum payment; management of Fund.

(a) Any person who: (1) obtains a final judgment, including a settlement reduced to a final judgment, in any court of competent jurisdiction in the District against any other person on the grounds of fraud, misrepresentation, deceit, embezzlement, false pretenses, forgery, failure to account for or conversion of trust funds, or violation of the provisions of this subchapter, arising directly out of any transaction which occurred when the other person was licensed under this subchapter, during the course of which the licensee performed acts for which a license is required under this subchapter, and which transaction occurred on or after March 10, 1983; and (2) meets the requirements of subsection (b) of this section; may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a written application, under oath, with the Mayor for an order directing payment from the Fund of the amount of actual and direct loss in the transaction (excluding the amount of any interest, attorney's fees, court costs, or punitive or exemplary damages) which remains unpaid upon the judgment. The application shall be filed no later than 12 months after the date on which the judgment became final.

(b) A person filing an application meets the requirements of this subsection if:

(1) The person is not a licensee or the personal representative of a licensee and is not the spouse or child of the licensee against whom the final judgment was awarded, or the personal representative of the spouse or child;

(2) The person has made the investigation as is reasonably necessary to determine whether the judgment debtor possesses real or personal property or other assets which are liable to be sold or applied in satisfaction of the final judgment and has filed with the Board an affidavit which states that the investigation has been made; and

(3) The investigation required by paragraph (2) of this subsection has not disclosed the existence of any real or personal property or other assets, or, if the investigation has disclosed the existence of real or personal property or other assets (which shall be described in the affidavit) the person has taken all action necessary for the sale or application, and the amount so realized is insufficient to satisfy the judgment (which amount shall have been stated in the affidavit together with the balance remaining due on the judgment after the sale or application).

(c) Notwithstanding any other provision of this section, the maximum

amount that may be paid from the Fund to satisfy in whole or in part a final judgment against a licensee as provided for herein shall be as follows:

<u>Amount</u>	
\$10,000	Judgment is final during the first year following March 10, 1983;
\$20,000	Judgment is final during the second year following March 10, 1983;
\$30,000	Judgment is final during the third year following March 10, 1983;
\$40,000	Judgment is final during the fourth year following March 10, 1983; and
\$50,000	Judgment is final during the fifth year following March 10, 1983, and thereafter.

(d) The aggregate of claims by judgment creditors against the Fund based upon an unpaid final judgment arising out of the acts of the licensee in connection with a single transaction shall be \$50,000 regardless of the number of claimants. If the aggregate of claims exceeds \$50,000, the Board shall pay \$50,000 to the claimants in proportion to the amounts of their final judgments against the Fund which remain unpaid. If the Mayor has reason to believe that there may be additional claims against the Fund arising out of the same transaction, the Mayor may withhold payment from the Fund involving the licensee for a period of not more than 1 year.

(e) Any person who commences an action for a judgment which could be the basis for an order of the Mayor directing payment from the Fund shall notify the Mayor in writing within 30 days after the date of the commencement of the action. Any failure to notify the Mayor as required under this subsection shall be grounds for the Mayor to deny an application of the person for payment from the Fund. The Mayor may waive this requirement if good cause is shown for failure to notify. The Mayor may, in accordance with the provisions of this subchapter, commence an investigation of the complaint and hold a hearing to determine whether any license issued pursuant to this subchapter should be suspended or revoked.

(f) Whenever an aggrieved person who has become a judgment creditor as provided in this section files an application for an order directing payment from the Fund, the Mayor shall cause a copy of the application to be served on the licensee alleged to be the judgment debtor, by certified mail, return receipt requested, to the address of record of the licensee, and the matter shall be set for hearing before the Board. Whenever the Mayor determines that the applicant is entitled to payment from the Fund, the Mayor shall issue an order directing payment from the Fund in an amount consistent with this subchapter.

(g) If the Mayor issues an order directing payment from the Fund of any amount towards satisfaction of a judgment against a licensed real estate broker, real estate salesperson, or property manager, the license of the person shall be automatically suspended upon the issuance of the order. No real estate broker, real estate salesperson, or property manager shall be eligible to have his or her license restored until he or she has repaid in full the amount ordered

paid from the Fund, plus interest at an annual rate established by the Mayor from the date of payment of the amount from the Fund, and has satisfied all rules governing licensure as set forth in this subchapter.

(h) Whenever amounts deposited in the Fund are insufficient to satisfy any duly authorized claim or portion thereof, the Mayor shall, when sufficient money has been deposited or portions thereof, satisfy the unpaid claims in the order that the applications relating thereto were originally filed with the Mayor, including accumulated interest at an annual rate established by the Mayor for a period not to exceed 1 year in duration.

(i) In addition to the requirements of this subchapter, if the Mayor determines that it is necessary to require the bonding requirements of licensees, the Mayor shall by rule establish bonding requirements as are deemed necessary to protect the public.

(j) All sums paid pursuant to § 42-1706 and subsection (c) of this section shall be deposited with the D.C. Treasurer and shall be credited to the Fund. Any interest earned from any deposits and investments of the Fund also shall be credited to the Fund. The interest to be credited to the Fund may be determined, consistent with the financial management procedures of the District and may be revised from time to time, as a pro-rata share of the interest earned on pooled cash, deposits, and investments.

(k) The Mayor shall, by rule, establish minimum and maximum balances for the Fund.

(l) Whenever the amount deposited in the Fund is less than the minimum balance established pursuant to subsection (k) of this section, the Mayor shall assess each licensee an amount, not to exceed \$50 during any license year, within 30 calendar days, which is sufficient, when combined with similar assessments of other licensees, to bring the balance of the Fund up to the minimum established. Whenever the amount deposited in the Fund is more than the maximum balance established, the Mayor shall waive contributions to the Fund required by this subchapter.

(m) Notice of an assessment required pursuant to subsection (l) of this section shall be sent, by certified mail, to each licensee at his or her address of record. The Board may waive the certified mail requirement to licensees only when the Board is doing a mass mailing, the cost of which makes the application of such fee an undue financial burden on the Board and may, in such circumstances, send notice of the assessment by regular mail to each licensee at his or her address of record. The Board shall also post notice of the assessment in at least two trade publications distributed within the metropolitan area and in a local newspaper in the real estate section. Payment of the assessment shall be made within 30 calendar days after the receipt by the licensee of the notice.

(n) A failure by any licensee to pay an assessment required pursuant to subsection (l) of this section within 30 days after the licensee has received notice of the assessment shall result in the automatic suspension of the license of the licensee. The Board shall send a notice of the suspension, by certified mail, to the address of record of the licensee within 5 days after the suspension. The license shall be restored only upon the actual receipt by the Mayor of the

delinquent assessment, plus any interest and penalties as the Mayor may prescribe by rule.

(o) The Board may expend a sum not to exceed 20% of the amounts deposited in the Fund, on October 1 of each year, for the establishment and maintenance of educational programs for improving the competency of licensees and applicants for licensure so as to further protect the public interest, and for conferences, workshops, and educational programs for real estate license officials. The cost of administering the Fund shall be paid out of the Fund.

(p) When the Mayor has ordered a sum from the Fund to be paid to a judgment creditor, the Mayor shall be subrogated to all of the rights of the judgment creditor up to the amount paid and the judgment creditor shall assign to the Mayor all rights, title, and interest in the judgment up to the amount paid from the Fund. Any amount and interest so recovered by the Mayor or the judgment creditor on the judgment up to the amount paid shall be deposited in the Fund.

(Mar. 10, 1983, D.C. Law 4-209, § 30, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(u), 31 DCR 4023; Apr. 9, 1997, D.C. Law 11-242, § 3(4), (5), 44 DCR 1128; Apr. 20, 1999, D.C. Law 12-261, § 1233(cc), 46 DCR 3142.)

Section references. — This section is referred to in §§ 1-321.02 and 42-1706.

Prior Codifications. — 1981 Ed., § 45-1949.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 11-242. — For legislative history of D.C. Law 11-242, see Historical and Statutory Notes following § 42-1702.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

CASE NOTES

Redirecting of funds.

Real Estate Licensure Act did not preclude Council of District of Columbia from transferring monies from Real Estate Guarantee and Education Fund to District's General Fund for purpose of balancing District's budget for fiscal year; although provision of Act required all

sums paid pursuant to Act to be deposited with Treasurer and credited to Fund, it did not purport to bar Council from redirecting monies in Fund as needed. *Wash., D.C. Ass'n of Realtors, Inc. v. District of Columbia*, 44 A.3d 299, 2012 D.C. App. LEXIS 271 (2012).

§ 42-1708. Additional criminal penalties.

(a) Any person who knowingly files with the Mayor any application, notice, or other document required to be filed under this subchapter or any rule issued thereunder, which is false or fraudulent or contains any material misstatement of fact, shall, upon conviction, be punished by a fine of no more than \$3,000 or by imprisonment for no more than 1 year, or both.

(b) The Corporation Counsel of the District may enter an appearance, file an answer, appear at court hearings, defend the action, or take whatever other action he or she deems appropriate on behalf of any party to a court proceeding in the District in which the Mayor may be interested, and may take recourse

through any appropriate method of review on behalf and in the name of any party to a court action.

(c) Nothing contained in this subchapter shall be construed as limiting the authority of the Mayor to take disciplinary action against any licensee pursuant to this subchapter for any violation of this subchapter or any rules promulgated under this subchapter, nor shall repayment in full of the amount paid from the Fund on the licensee's account nullify or modify the effect of any other disciplinary proceeding brought against the licensee pursuant to this subchapter for any violation.

(Mar. 10, 1983, D.C. Law 4-209, § 31, 30 DCR 390.)

Section references. — This section is referred to in §§ 1-321.02 and 42-1703.

Prior Codifications. — 1981 Ed., § 45-1950.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see His-

torical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1709. Savings clause.

(a) The repeal of any provision of §§ 42-1721 to 42-1738 [repealed], or any rule issued pursuant to this subchapter, shall not affect any act done, or any right accruing or accrued on any liability arising, or any suit or proceeding had or commenced in any civil cause under §§ 42-1721 to 42-1738 [repealed] before repeal, but all rights and liabilities under §§ 42-1721 to 42-1738 [repealed] shall continue and may be enforced in the same manner and to the same extent as if this subchapter had not been enacted.

(b) Any violation of any provision of §§ 42-1721 to 42-1738 [repealed] or any liability arising under the provision, shall, if the violation occurred prior to repeal, be prosecuted and punished in the same manner and with the same effect as if this subchapter had not been enacted.

(Mar. 10, 1983, D.C. Law 4-209, § 33, 30 DCR 390.)

Section references. — This section is referred to in § 1-321.02.

Prior Codifications. — 1981 Ed., § 45-1951.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Subchapter II. Repealed Provisions.

§§ 42-1721 to 42-1738. Acting as broker or salesman without license unlawful; definitions; exceptions to license requirements; single act may constitute one "broker" or "salesman;" applicability of chapter; Real Estate Commission; creation; membership; terms; officers and staff; seal; records; compensation; annual audit; rules and regulations; license; qualifications; compe-

tency and proof thereof; prohibitions on license issuance; written application; brokers and salesmen; recommendations; firms, partnerships, etc., and members thereof; oath; fee; bond and surety; other proof of character; hearing before refusal to issue; form and contents; display; rehearing within 6 months; notice to licensee; fees; expiration; renewal; actions for compensation for service or for enforcement of contracts; places of business; discharged or terminated salesmen; transferability; suspension or revocation; investigation upon complaint; prohibited acts; hearing by Commission before denial of application or suspension; written notice; procedure; court review of determination; copy of record; provisions applicable to nonresident brokers and salesmen; members of Commission authorized to administer oaths; court to enforce compliance with Commission; exemptions from license requirements; limitation on exemptions; list of licenses, suspensions, and revocations and report of Commission to be published annually; unlawful acts; misleading deeds, mortgages and deeds of trust; prizes and awards in connection with sale of property; commission to one not licensed; revocation of license upon conviction of certain crimes; suspension for indictment thereof; refusal for past convictions; revocation or suspension of member of copartnership or association; penalties; other liability; prosecutions by and advice of Corporation Counsel; bond required for renewal of licenses; separability [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 34, 30 DCR 390.)

Prior Codifications. — 1981 Ed., §§ 45-1901 to 45-1918.

Legislative history of Law 4-209. — For

legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

§ 42-1739. Real Estate Commission of the District of Columbia. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 4, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(c), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(c), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1923.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1740. Powers and duties of Mayor; evidentiary use of copies of Commission documents; record of Commission proceedings. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 5, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(d), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(d), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1924.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1741. Fees. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 6, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(e), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1925.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1742. Licensure of real estate brokers, real estate salespersons, and property managers. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 7, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(e), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(f), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1926.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1743. Qualifications for licensure. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 8, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(f), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(g), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1927.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1744. Status of person previously licensed. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 9, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(g), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(h), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1928.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For

legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1745. Licensure required for property managers. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 10, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(i), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1929.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1746. Registration and certification required for resident managers. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 10a, as added Sept. 26, 1984, D.C. Law 5-117, § 2(h), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(j), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1929.1.

Legislative history of Law 5-117. — Law 5-117, the "District of Columbia Real Estate Licensure Act of 1982 Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-175, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on

June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-169 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1747. Qualifications for licensure of property managers. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 11, 30 DCR 390; Apr. 30, 1988, D.C. Law 7-104, § 45, 35 DCR 147; Apr. 20, 1999, D.C. Law 12-261, § 1233(k), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1930.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987, and Dec. 8,

1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1748. Waiver of examination and education requirements for property managers. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 11a, as added Sept. 26, 1984, D.C. Law 5-117, § 2(i), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(l), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1930.1.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1749. Exemptions. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 12, 30 DCR 390; Oct. 8, 1983, D.C. Law 5-31, § 10(d), 30 DCR 3879; Sept. 26, 1984, D.C. Law 5-117, § 2(j), 31 DCR 4023; June 6, 1998, D.C. Law 12-116, § 3, 45 DCR 1960; Apr. 20, 1999, D.C. Law 12-261, § 1233(m), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1931.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-31. — Law 5-31, the "Lower Income Homeownership Tax Abatement and Incentives Act of 1983," was introduced in Council and assigned Bill No. 5-167, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1983, and

July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1750. Transfer of license; change of status; brokerage firms. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 13, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(k), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(n), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1932.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For

legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1751. Licensure of legal entities. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 13a, as added Sept. 26, 1984, D.C. Law

5-117, § 2(l), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(o), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1932.1.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1752. Place of business. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 14, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(m), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(p), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1933.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1753. Prohibited names. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 15, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(n), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(q), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1934.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For

legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1754. Injunctions. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 16, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(r), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1935.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see His-

torical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see His-

torical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of

authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1755. Investigation of conduct; suspension or revocation of license; grounds; penalty in lieu of suspension; probationary period; reinstatement. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 17, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(o), 31 DCR 4023; Mar. 14, 1985, D.C. Law 5-159, § 8, 32 DCR 30; Mar. 6, 1991, D.C. Law 8-209, § 2(b), 37 DCR 8464; Feb. 5, 1994, D.C. Law 10-68, § 38(b), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-242, § 3(1), (2), 44 DCR 1128; Apr. 20, 1999, D.C. Law 12-261, § 1233(s), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1936.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 5-159. — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10,

1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-209. — For legislative history of D.C. Law 8-209, see Historical and Statutory Notes following § 42-1702.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 42-1702.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1756. Procedural requirements. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 19, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(t), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1938.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1757. Automatic suspension of license through affiliation; discharge or termination of employment or affiliation. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 20, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(q), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(u), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1939.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1758. Prohibited acts. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 21, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(r), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(v), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1940.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For

legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1759. License suspended upon criminal conviction. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 22, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(w), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1941.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1760. Effect of criminal conviction upon license application. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 23, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(x), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1942.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1761. Effect of license revocation or suspension upon partnership, association, or corporation. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 24, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(s), 31 DCR 4023; Apr. 20, 1999, D.C. Law 12-261, § 1233(y), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1943.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 5-117. — For legislative history of D.C. Law 5-117, see Historical and Statutory Notes following § 42-1746.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1762. Suspension or revocation of property manager license; code of ethics applicable to all licensees. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 25, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(z), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1944.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor's Order 83-123, May 6, 1983.

§ 42-1763. Criminal penalties; prosecutions. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 27, 30 DCR 390; Oct. 5, 1985, D.C. Law 6-42, § 405, 32 DCR 4450; Apr. 20, 1999, D.C. Law 12-261, § 1233(aa), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1946.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see His-

torical and Statutory Notes following § 42-1701.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June

25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

§ 42-1764. Duties of Corporation Counsel. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-209, § 28, 30 DCR 390; Apr. 20, 1999, D.C. Law 12-261, § 1233(bb), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-1947.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 42-1701.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-1701.

Delegation of Authority. — Delegation of authority under Law 4-209, see Mayor’s Order 83-123, May 6, 1983.

CHAPTER 18. REAL ESTATE SALE OR RENT SIGNS.

Sec.

42-1801. Signs on sidewalk or parking prohib-

ited; number of signs; removal; penalties.

§ 42-1801. Signs on sidewalk or parking prohibited; number of signs; removal; penalties.

No sign or advertisement relating to the sale, rent, or lease of land or premises shall be located on the sidewalk or parking of any street, avenue, or road in the District of Columbia. One painted or printed sign or advertisement for the sale, rent, or lease of land or premises may, with the written consent of the owner or legal representative of the owner, be placed, by any 1 of not exceeding 3 real estate agents, on any lot, piece, or parcel of land abutting on a street, avenue, or road in said District, or attached to the exterior of any building fronting thereon. The Mayor of the District of Columbia is authorized to use the police authority vested in him, to require the removal of any sign or advertisement in violation of this provision, and to institute prosecutions, in the Superior Court of the District of Columbia, against persons violating the provisions hereof, and every such person, upon conviction of such violation, shall be fined in the sum of not less than \$5 nor more than \$25. This section shall not apply to the temporary placement of directional signs relating to the sale or lease of real estate which indicate the holding of an open house or a sign attached to the 1 painted or printed sign allowed by this section which indicates that the premises have been sold, leased, or placed under contract.

(Mar. 4, 1913, 37 Stat. 974, ch. 150, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Mar. 16, 1993, D.C. Law 9-189, § 2, 39 DCR 9001.)

Cross references. — Out-of-door advertising signs, power of Council to regulate and license, see § 1-303.21 et seq.

Prior Codifications. — 1981 Ed., § 45-2001.

1973 Ed., § 7-1001.

Emergency legislation. — For temporary (90 day) repeal of section, see § 7 of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 9-189. — Law 9-189, the “Real Estate Sign Placement Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-200, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-310 and transmitted to both Houses of Congress for its review. D.C. Law 9-189 became effective on March 16, 1993.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

SUBTITLE III. CONDOMINIUMS.

CHAPTER 19. CONDOMINIUMS.

Subchapter I. General Provisions

- Sec.
- 42-1901.01. Applicability of chapter; corresponding terms; supersedure of prior law.
- 42-1901.02. Definitions.
- 42-1901.03. Ownership of individual units.
- 42-1901.04. Separate taxation.
- 42-1901.05. Ordinances and regulations.
- 42-1901.06. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, profits, and future liabilities; recordation of decree.
- 42-1901.07. Variation by agreement.
- 42-1901.08. Interpretation of chapter.

Subchapter II. Establishment of Condominiums

- 42-1902.01. Creation of condominiums; recordation of instruments; plats; contiguity of units.
- 42-1902.02. Release of liens prior to conveyance of first unit; exemption; liens for labor or material applied to individual units or common areas; partial release.
- 42-1902.03. Description of condominium units; undivided interest in common elements automatically included.
- 42-1902.04. Declaration, bylaws and amendments of each to be executed by owners and lessees.
- 42-1902.05. Recordation of condominium instruments; amendment and certification thereof.
- 42-1902.06. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.
- 42-1902.07. Instruments construed together and incorporate one another; when conflict arises.
- 42-1902.08. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint.
- 42-1902.09. Compliance with condominium chapter and instruments.
- 42-1902.10. Contents of declaration; where condominium contains convertible land; expandable, contractable

Sec.

- and leasehold condominiums; easements; additionally required descriptions.
- 42-1902.11. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.
- 42-1902.12. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.
- 42-1902.13. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.
- 42-1902.14. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.
- 42-1902.15. Preliminary recordation of plans.
- 42-1902.16. Easement for encroachments and support; where liability not relieved.
- 42-1902.17. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.
- 42-1902.18. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.
- 42-1902.19. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common elements.
- 42-1902.20. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.
- 42-1902.21. Declarant's easement over common elements for purpose of improvements, etc.
- 42-1902.22. Sales offices, model units, etc.; authorization; when become common elements.
- 42-1902.23. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improve-

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	ments designated for such; liability for damages arising out of use of certain easements.		against structural defects; limitations upon actions; bond or other security.
42-1902.24.	Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining units.	42-1903.08.	Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements.
42-1902.25.	Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.	42-1903.09.	Tort and contract liability of association and declarant; judgment liens against common property and individual units.
42-1902.26.	Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.	42-1903.10.	Insurance obtained by association; notice to unit owners.
42-1902.27.	Amendment of instruments.	42-1903.11.	Rights to surplus funds.
42-1902.28.	Termination of condominium.	42-1903.12.	Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.
42-1902.29.	Condominium lease; recordation; terms; leasehold payments; increases; sale or assignment; offer to unit owners' association; renewal.	42-1903.13.	Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.
42-1902.30.	Transfer of special declarant rights.	42-1903.14.	Financial records.
<i>Subchapter III. Control and Governance of Condominiums</i>		42-1903.15.	Limitation on right of first refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.
42-1903.01.	Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; amendment and contents thereof; responsibility for insurance on common elements.	42-1903.16.	Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.
42-1903.02.	Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.	42-1903.17.	Statute of limitations for warranties.
42-1903.03.	Meetings.	42-1903.18.	Master associations — Authorization; powers; rights and responsibilities of unit owners; election of executive board.
42-1903.04.	Meetings — Executive board; quorums.	42-1903.19.	Merger or consolidation of condominiums.
42-1903.05.	Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.	42-1903.20.	Conveyance or encumbrance of common elements.
42-1903.06.	Officers; disqualification.	42-1903.21.	Unit owners' association as trustee.
42-1903.07.	Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof; warranty	<i>Subchapter IV. Registration and Offering of Condominiums</i>	
		42-1904.01.	Exemptions.
		42-1904.02.	No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

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42-1904.03. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.	to be furnished to purchaser by declarant.
42-1904.04. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.	42-1904.11. Resale by unit owner; seller to obtain appropriate statements from association and furnish to purchaser; scope of provisions.
42-1904.05. Application for registration — Investigation by Mayor upon receipt.	42-1904.12. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.
42-1904.06. Application for registration — Notice of filing; registration or rejection; notice of need for rejection; hearing.	42-1904.13. Investigations and proceedings; powers of Mayor; enforcement through courts.
42-1904.07. Registration; annual updating report by declarant; termination.	42-1904.14. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.
42-1904.08. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.	42-1904.15. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.
42-1904.09. Escrow of deposits; to bear interest; not subject to attachment.	42-1904.16. Judicial review of mayoral actions.
42-1904.10. Copies of declaration and bylaws	42-1904.17. Penalties; prosecution by Corporation Counsel.
	42-1904.18. Severability.

Subchapter I. General Provisions.

§ 42-1901.01. Applicability of chapter; corresponding terms; supersedure of prior law.

(a) This chapter shall apply to all condominiums created in the District of Columbia after March 29, 1977. Sections 42-1901.03 through 42-1901.06, 42-1902.03, 42-1902.06 through 42-1902.09, 42-1902.30, 42-1903.05(d), 42-1903.08(a)(1) through (6), 42-1903.08(a)(11) through (16), 42-1903.09, 42-1903.13, 42-1903.14, 42-1903.20, 42-1904.11, 42-1904.13 through 42-1904.17, and 42-1901.02, to the extent necessary in construing any of those sections, shall apply to any condominium and to any horizontal property regime or condominium project created in the District of Columbia before March 29, 1977, except that these sections shall apply only with respect to an event or circumstance that occurs after March 29, 1977 and shall not invalidate any existing provision of the condominium instruments of any condominium, horizontal property regime, or condominium project.

(b) For the purposes of this chapter:

(1) The terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium";

(2) The term "co-owner" shall be deemed to correspond to the term "unit owner";

(3) The term "council of co-owners" shall be deemed to correspond to the term "unit owners' association";

(4) The term “developer” shall be deemed to correspond to the term “declarant”; and

(5) The term “general common elements” shall be deemed to correspond to the term “common elements.”

(c) This chapter shall supersede Chapter 20 of this title, and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this chapter after March 28, 1977. This chapter shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of Chapter 20 of this title and recorded prior to March 28, 1977. Except for § 42-1904.11, subchapter IV shall not apply to any condominium created prior to March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this chapter and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this chapter, any correlative obligation, liability, or restriction in this chapter shall apply to that person.

(d) This chapter shall not apply to any condominium located outside the District of Columbia. Sections 42-1904.02 through 42-1904.08 and §§ 42-1904.12 through 42-1904.17 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under § 42-1904.01.

(e) Except as otherwise provided in this chapter, amendments to this chapter shall not invalidate any provision of any condominium instrument which was permitted under this chapter at the time the provision was recorded.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 101, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(a), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(a), 39 DCR 683.)

Cross references. — Rental housing conversion and sale, see § 42-3401.01 et seq.

Prior Codifications. — 1981 Ed., § 45-1801.

1973 Ed., § 5-1201.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — Law 1-89, the “Condominium Act of 1976,” was introduced in Council and assigned Bill No. 1-179, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 29, 1976, and July 20, 1976, respectively. Signed by the Mayor on August 6, 1976, it was

assigned Act No. 1-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — Law 9-82, the “Condominium Act of 1976 Technical and Clarifying Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1991, and January 7, 1992, respectively. Signed by the Mayor on January 28, 1992, it was assigned Act No. 9-140 and transmitted to both Houses of Congress for its review. D.C. Law 9-82 became effective on March 20, 1992.

CASE NOTES

ANALYSIS

Arbitration.

In general.

Summary judgment.

Arbitration.

Arbitration agreement in contract for sale of penthouse precluded federal litigation of purchasers' claims that contract violated Interstate Land Sales Full Disclosure Act (ILSFDA), the District of Columbia Condominium Act, and the District of Columbia Consumer Protection Act prior to arbitration of such claims, where arbitration clause encompassed any fraud or misrepresentation, the claims that comprised the gravamen of purchasers' complaint. *Olle v. 5401 W. Ave. Residential, LLC*, 569 F.Supp.2d 141, 2008 U.S. Dist. LEXIS 59054 (2008).

In general.

While developer and its general partners may or may not have been liable under products liability principles for conditions that preexisted their involvement with building which was converted to condominium ownership, they were responsible for quality and results of work they, in fact, undertook. D.C. Code 1981, §§ 45-1801 et seq., 45-1847(b). *Towers Tenant Ass'n v. Towers Ltd. Partnership*, 563 F. Supp. 566, 1983 U.S. Dist. LEXIS 17156 (1983).

Absent some evidence of acquiescence by individual owner of condominium unit, power of sale mechanism enacted after condominium documents are recorded and after individual owner has purchased his unit cannot be inter-

preted to apply retroactively to alter contractual rights between condominium owner and condominium association. D.C. Code 1981, § 45-1801(c). *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 548 A.2d 87, 1988 D.C. App. LEXIS 162 (1988).

Condominium Act does not provide remedies additional to those of common law, but at most, provides standing to sue for noncompliance with provisions of Act. D.C. Code 1978 Supp. §§ 5-1201 et seq., 5-1219; D.C. Code 1981, §§ 45-1801 et seq., 45-1819. *Dresser v. Sunderland Apartments Tenants Ass'n*, 465 A.2d 835, 1983 D.C. App. LEXIS 456 (1983).

Summary judgment.

Material issues of fact existed as to whether condominium association had authority under bylaws to foreclose on liens for unpaid assessments by individual owner by executing statutory of power of sale, rather than proceeding by judicial foreclosure, thereby precluding summary judgment in favor of condominium association; statutory provision providing for power of sale foreclosure was not enacted until after condominium documents were recorded and owner had purchased his unit, and documents submitted did not contain any provision which could be interpreted as providing for incorporation of subsequent amendments to Condominium Act into contract between unit owner and association. D.C. Code 1981, § 45-1801(c). *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 548 A.2d 87, 1988 D.C. App. LEXIS 162 (1988).

§ 42-1901.02. Definitions.

For the purposes of this chapter:

(1) "Common elements" shall mean all portions of the condominium other than the units.

(2) "Common expenses" shall mean all lawful expenditures made or incurred by or on behalf of the unit owners' association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments. "Future common expenses" shall mean common expenses for which assessments are not yet due and payable.

(3) Repealed.

(4) "Condominium" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership. Real estate shall not be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

(5) "Condominium instruments" shall mean the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any

exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

(6) "Condominium unit" shall mean a unit together with the undivided interest in the common elements appertaining to that unit.

(7) "Contractable condominium" shall mean a condominium from which 1 or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of 1 or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

(8) "Conversion condominium" shall mean a condominium containing structures which before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

(9) "Convertible land" shall mean a building site; that is to say, a portion of the common elements, within which additional units or limited common elements, or both, may be created in accordance with the provisions of this chapter.

(10) "Convertible space" shall mean a portion of a structure within the condominium, which portion may be converted into 1 or more units or common elements, or both, in accordance with the provisions of this chapter.

(11) "Declarant" shall mean any person or group of persons acting in concert who:

(A) Offers to dispose of the person's or group's interest in a condominium unit not previously disposed of;

(B) Reserves or succeeds to any special declarant right; or

(C) Applies for registration of the condominium.

(11A)(A) "Affiliate of a declarant" shall mean any person who controls, is controlled by, or shares common control with a declarant.

(B) A person controls a declarant if the person:

(i) Is a general partner, officer, director, or employer of the declarant;

(ii) Directly or indirectly or acting in concert with at least 1 other person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies that represent more than 20% of the voting interest in the declarant;

(iii) Controls in any manner the election of a majority of the directors of the declarant; or

(iv) Has contributed more than 20% of the capital of the declarant.

(C) A person is controlled by a declarant if the declarant:

(i) Is a general partner, officer, director, or employer of the person;

(ii) Directly or indirectly or acting in concert with another person, or

through a subsidiary, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person; or

(iii) Controls in any manner the election of a majority of the directors if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(12) "Disposition" shall mean any voluntary transfer to a purchaser of a legal or equitable interest in a condominium unit, other than as security for a debt or pursuant to a deed in lieu of foreclosure.

(12A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(13) "Executive Board" shall mean an executive and administrative entity, by whatever name denominated and designated in the condominium instruments to act for the unit owners' association in governing the condominium.

(14) "Expandable condominium" shall mean a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

(15) "Identifying number" shall mean 1 or more letters or numbers, or both, that identify only 1 unit in the condominium.

(16) "Institutional lender" shall mean 1 or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including but not limited to, real estate investment trusts, any other entity regularly engaged directly or indirectly in financing the purchase, construction, or improvement of real estate, or any combination of any of the foregoing entities.

(17) Repealed.

(18) "Leasehold condominium" shall mean a condominium all or any portion of which is subject to a lease, the expiration or termination of which will terminate the condominium or exclude a portion therefrom.

(19) "Limited common element" shall mean a portion of the common elements reserved for the exclusive use of those entitled to the use of 1 or more, but less than all, of the units.

(19A) "Master association" shall mean an organization described in § 42-1903.18, whether or not the organization is an association described in § 42-1903.01.

(20) "Mayor" shall mean the Mayor of the District of Columbia.

(21) "Nonbinding reservation agreement" shall mean an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be cancelled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested to the declarant at any time prior to the execution of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

(22) "Offer" shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a

condominium unit, other than as security for a debt; provided, however, that “offer” shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium. Nothing shall be considered an offer that expressly states that the condominium has not been registered with the Mayor and that no unit in the condominium can or will be offered for sale until the time the unit has been so registered.

(23) “Officer” shall mean any member of the executive board or official of the unit owners’ association.

(24) “Par value” shall mean a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners’ association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

(25) “Person” shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

(26) “Purchaser” shall mean any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer, acquires a legal or equitable interest in a condominium unit other than a leasehold interest, including a renewal option, of less than 20 years, or as security for an obligation.

(26A) “Real estate” or “land” shall mean any leasehold or other estate or interest in, over, or under land, including but not limited to, any structure, fixture, or any other improvement or interest which by custom, usage, or law passes with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term “real estate” or “land” shall be deemed to include a parcel with or without an upper or lower boundary, and space that may be filled with air or water. Any requirement in the Condominium Amendment Act of a legally sufficient description shall be deemed to include a requirement that any upper or lower boundary of a parcel be identified with reference to established data.

(27) “Registered land surveyor” shall mean any person or firm permitted to prepare and certify surveys and subdivision plats in the District of Columbia, including but not limited to, registered civil engineers.

(28) “Size” shall mean the number of cubic feet or the number of square feet of ground or floor space, or both, within each unit as computed by reference to the plats and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, or garage

space, may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

(28A) "Special declarant right" shall mean any right reserved for the benefit of a declarant or any person that becomes a declarant to:

(A) Complete improvements indicated on plats and plans filed with the declaration pursuant to § 42-1902.14;

(B) Expand an expandable condominium pursuant to § 42-1902.19;

(C) Contract a contractable condominium pursuant to § 42-1902.20;

(D) Convert convertible land, convertible space, or both pursuant to § 42-1902.17 or § 42-1902.18;

(E) Elect, appoint, or remove any officer of the unit owners' association or master association or any executive board member pursuant to § 42-1903.02 during any period of declarant control;

(F) Exercise any power or responsibility otherwise assigned by any condominium instrument or by the Condominium Amendment Act to the unit owners' association, any officer of the unit owners' association, or the executive board;

(G) Use easements through the common elements to make improvements within the condominium or real estate that may be added to the condominium pursuant to § 42-1902.21;

(H) Make the condominium subject to a master association pursuant to § 42-1903.18;

(I) Make the condominium part of a larger condominium pursuant to § 42-1903.19; or

(J) Maintain a sales office, management office, or model unit pursuant to § 42-1902.22.

(29) "Surveyor" shall mean the Office of the Surveyor of the District of Columbia.

(29A) "Time share" shall mean a right to occupy a condominium unit or any of several condominium units during 5 or more separate time periods over a period of at least 5 years including renewal options, whether or not the right is coupled with an estate or interest in a condominium or a specified portion of an estate or interest in a condominium.

(30) "Unit" shall mean a portion of the condominium designed and intended for individual ownership. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with § 42-1902.18(d).

(31) "Unit owner" shall mean a declarant or any person who owns a condominium unit. In the case of a leasehold condominium, "unit owner" shall mean a declarant or person whose leasehold interest in the condominium extends for the entire balance of the unexpired term. The term "unit owner" shall not include a person who has an interest in a condominium unit solely as a security for a debt.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 102, 23 DCR 9532b; Sept. 22, 1978, D.C. Law 2-110, § 2, 25 DCR 1461; Mar. 8, 1991, D.C. Law 8-233, § 2(b), 38

DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(b), 39 DCR 683; Apr. 9, 1997, D.C. Law 11-255, § 49(a), 44 DCR 1271; Sept. 12, 2008, D.C. Law 17-231, § 36(a), 55 DCR 6758.)

Cross references. — Real property assessment and tax, taxpayer defined with reference to interests under this section, see § 47-802.

Real property tax sales, condominium, notice to record owner, see § 47-1302.

Rental housing conversion and sale, condominium defined, see § 42-3401.03.

Section references. — This section is referred to in §§ 42-1901.01 and 42-1902.06.

Prior Codifications. — 1981 Ed., § 45-1802.

1973 Ed., § 5-1202.

Effect of amendments. — D.C. Law 17-231 added par. (12A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 2-110. — Law 2-110, the “Condominium Act of 1976 Amendment of 1978,” was introduced in Council and assigned Bill No. 2-200, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and

second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-231 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

References in text. — The “Condominium Amendment Act,” referred to in the third sentence of (26A), and in (28A)(F), is D.C. Law 8-233.

CASE NOTES

ANALYSIS

Arbitration.
In general.

Arbitration.

Provision in purchase agreement related to purchase of condominiums guaranteeing that condominiums would be delivered to purchaser “substantial in accordance with Plats and Plans” and requiring that all disputes “involving delivery of Unit in accordance with the Plans” be submitted to project architect for resolution did not compel arbitration of unit owners’ claims for defective construction of condominiums, fraud, and related claims; “Plats and Plans,” as defined by Condominium Act, referred to location and dimensions of vertical boundaries of unit within building, which dis-

putes were within professional expertise of architect, and did not include construction plans for installation of utilities, which were allegedly negligently installed. 2200 M St. LLC v. Mackell, 940 A.2d 143, 2007 D.C. App. LEXIS 703 (2007).

In general.

Board of Zoning Adjustment could require condominium association to participate in hearing on applications for special exceptions to open mental health offices in condominium complex; owners of condominium units who did not apply for the special exceptions had an interest in the proceedings by virtue of their shared interest in the common areas. D.C. Code 1981, § 45-1802(6); D.C.Mun.Reg. title 11, §§ 501, 508. Gage v. District of Columbia Bd. of Zoning Adjustment, 738 A.2d 1219, 1999 D.C. App. LEXIS 238 (1999).

§ 42-1901.03. Ownership of individual units.

Each condominium unit shall constitute for all purposes a separate parcel of

real estate, distinct from all other condominium units. Any condominium unit may be owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of spouses or domestic partners), or in any other real estate tenancy relationship recognized under the laws of the District of Columbia.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 103, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(c), 38 DCR 261; Sept. 12, 2008, D.C. Law 17-231, § 36(b), 55 DCR 6758.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1902.06.

Prior Codifications. — 1981 Ed., § 45-1803.

1973 Ed., § 5-1203.

Effect of amendments. — D.C. Law 17-231 substituted “(in the case of spouses or domestic partners)” for “(in the case of husband and wife)”.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

§ 42-1901.04. Separate taxation.

(a) If there is any unit owner other than the declarant, a tax or assessment shall not be levied on the condominium as a whole or against any common elements, but only on the individual condominium units. A condominium unit shall be carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity.

(b)(1) Notwithstanding subsection (a) of this section, for real property tax years beginning after September 30, 2011, horizontally or vertically abutting condominium units owned by the identical unit owner that comprise and are used as a single dwelling unit may be combined for assessment and taxation purposes into a separate and distinct taxable entity (“combined tax lot”); provided, that the unit owner applies for combined tax lot treatment pursuant to D.C. Code § 47-832.

(2) Combined tax lot treatment granted pursuant to paragraph (1) of this subsection shall take effect for the succeeding real property tax year following the date the application is received.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 104, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(d), 38 DCR 261; July 13, 2012, D.C. Law 19-150, § 2, 59 DCR 5132.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1804.

1973 Ed., § 5-1204.

Effect of amendments. — D.C. Law 19-150 designated the existing text as subsec. (a); and added subsec. (b).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical

and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 19-150. — Law 19-150, the “Combined Condominium Real Property Tax Amendment Act of 2012”, was introduced in Council and assigned Bill No.

19-188, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 17, 2012, and May 1, 2012, respectively. Signed by the

Mayor on May 11, 2012, it was assigned Act No. 19-356 and transmitted to both Houses of Congress for its review. D.C. Law 19-150 became effective on July 13, 2012.

§ 42-1901.05. Ordinances and regulations.

No zoning or other land use ordinance or regulation shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance or regulation which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance or regulation shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance or regulation is by its express terms made applicable thereto. Nothing in this section shall be construed to permit application of any provision of the building code which is not expressly applicable to condominiums by reason of the form of ownership inherent therein to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 105, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1805.
1973 Ed., § 5-1205.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

CASE NOTES

Improvements to common areas.

Condominiums were “residential property” under the municipal regulations, and thus contract for improvements to the common areas of condominium building fell within scope of regulation requiring that contractors doing home

improvement work, in order to accept payment before work was finished, were to be licensed as home improvement contractors. *Carlson Constr. Co. v. Dupont W. Condo., Inc.*, 932 A.2d 1132, 2007 D.C. App. LEXIS 576 (2007).

§ 42-1901.06. Eminent domain; allocation of award; proportionate shares of common areas and redemption thereof where units or parts of units taken; reallocation of voting rights, profits, and future liabilities; recordation of decree.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements, except that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more

than 1 unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.

(b) If 1 or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for the unit owner's entire undivided interest in the common elements and for the unit owner's entire unit.

(e) Votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion

to their relative voting strength in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the District of Columbia.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 106, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(e), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1903.10.

Prior Codifications. — 1981 Ed., § 45-1806.

1973 Ed., § 5-1206.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-

1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1901.07. Variation by agreement.

Except as expressly provided by this chapter, a provision of this chapter may not be varied by agreement and any right conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade a limitation or prohibition of this chapter or the condominium instruments.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 107, as added Mar. 8, 1991, D.C. Law 8-233, § 2(f), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(c), 39 DCR 683.)

Prior Codifications. — 1981 Ed., § 45-1807.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 8-233. — Law 8-233, the "Condominium Act of 1976 Reform Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-65, which was

referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-316 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1901.08. Interpretation of chapter.

In the application or construction of the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other

condominium statute that contains provisions similar to the provisions of this chapter.

(Mar. 29, 1977, D.C. Law 1-89, title I, § 108, as added Mar. 8, 1991, D.C. Law 8-233, § 2(g), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(d), 39 DCR 683.)

Prior Codifications. — 1981 Ed., § 45-1808.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

Subchapter II. Establishment of Condominiums.

§ 42-1902.01. Creation of condominiums; recordation of instruments; plats; contiguity of units.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections (a) and (b) of § 42-1902.14. The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, *ex proprio vigore*, to terminate the condominium.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 201, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(h), 38 DCR 261.)

Cross references. — Bylaws and declaration copies for purchasers, see § 42-1904.10.

Prior Codifications. — 1981 Ed., § 45-1811.

1973 Ed., § 5-1211.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical

and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.02. Release of liens prior to conveyance of first unit; exemption; liens for labor or material applied to individual units or common areas; partial release.

(a) At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however,

to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 42-1903.02(a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.01 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive board subsequent to any period of developer control pursuant to § 42-1903.02(a), shall be deemed to be performed or furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.01 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive board.

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against 2 or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in § 40-303.16. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to § 42-1903.12(c). Subsequent to such payment, discharge or other satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 42-1903.12 and 42-1903.13.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 202, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(i), 38 DCR 261.)

Prior Codifications. — 1981 Ed., § 45-1812.

1973 Ed., § 5-1212.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.03. Description of condominium units; undivided interest in common elements automatically included.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium and the instrument number and date of recordation of the declaration and the condominium book and page number where the plats and plans are recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 203, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1813.

1973 Ed., § 5-1213.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.04. Declaration, bylaws and amendments of each to be executed by owners and lessees.

The declaration and bylaws, and any amendments of either made pursuant to § 42-1902.19, shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase “owners and lessees” in the preceding sentence and in § 42-1902.19 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or curtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 204, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(j), 38 DCR 261.)

Prior Codifications. — 1981 Ed., § 45-1814.

1973 Ed., § 5-1214.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.05. Recordation of condominium instruments; amendment and certification thereof.

All amendments and certifications of the condominium instruments shall set forth the instrument number and date of recordation of the declaration and, when necessary, shall set forth the condominium book and page number where the plats and plans are recorded. All condominium instruments and all

amendments and certifications thereof shall set forth the name and address of the condominium and shall be so recorded. The Recorder of Deeds shall accept for recordation any executed and acknowledged condominium instrument or any executed and acknowledged amendment and certification without further review of a condominium instrument or the imposition of any additional requirement.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 205, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(k), 38 DCR 261.)

Cross references. — Bylaws and declaration copies for purchasers, see § 42-1904.10.

Prior Codifications. — 1981 Ed., § 45-1815.

1973 Ed., § 5-1215.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.06. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.

Except to the extent otherwise provided by the condominium instruments:

(1) The terms defined in § 42-1901.02 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires;

(2) To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all doors and windows therein, and all lath, wallboard, plastering, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors, or ceilings shall be deemed a part of the common elements;

(3) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than 1 unit or any portion of the common elements shall be deemed a part of the common elements;

(4) Subject to the provisions of paragraph (3) of this section, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit; and

(5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 206, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1902.10, 42-1902.14, and 42-1903.06.

Prior Codifications. — 1981 Ed., § 45-1816.

1973 Ed., § 5-1216.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.07. Instruments construed together and incorporate one another; when conflict arises.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. If any conflict exists among the condominium instruments, the declaration controls, except that a construction consistent with this chapter controls in all cases over any inconsistent construction.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 207, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1817.

1973 Ed., § 5-1217.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.08. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint.

(a) All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

(b) No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

(c) No restraint on alienation shall discriminate or be used to discriminate on the basis of religious conviction, race, color, sex, or national origin. The condominium instruments may provide, however, for restraints on use of some or all of the units restricting the use of such units to persons meeting requirements based upon age, sex, marital status, physical disability or, in connection with programs of the federal or District of Columbia government, income levels.

(d) Subject to the provisions of subsection (c) of this section, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units not restricted exclusively to residential use.

(e) Title to a condominium unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the condominium instruments to comply with this chapter. Whether or not a substantial failure impairs marketability is not affected by this chapter.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 208, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(l), 38 DCR 261.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1818.

1973 Ed., § 5-1218.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-

1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.09. Compliance with condominium chapter and instruments.

Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover damages or injunctive relief, or for any other available remedy maintainable by the unit owners' association, the unit owners' association's executive board, any managing agent on behalf of the unit owners' association, an aggrieved person on his or her own behalf, or, in an otherwise proper case, as a class action.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 209, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(m), 38 DCR 261.)

Cross references. — Liens for unit assessments, enforcement and foreclosure sales, see § 42-1903.13.

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1819.

1973 Ed., § 5-1219.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

Remedies.

Condominium Act does not provide remedies additional to those of common law, but at most, provides standing to sue for noncompliance with provisions of Act. D.C. Code 1978 Supp.

§§ 5-1201 et seq., 5-1219; D.C. Code 1981, §§ 45-1801 et seq., 45-1819. *Dresser v. Sunderland Apartments Tenants Asso.*, 465 A.2d 835, 1983 D.C. App. LEXIS 456 (1983).

§ 42-1902.10. Contents of declaration; where condominium contains convertible land; expandable, contractable and leasehold condominiums; easements; additionally required descriptions.

(a) The declaration for every condominium shall contain:

- (1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";
- (2) A legally sufficient description of the land submitted to this chapter;
- (3) A description or delineation of the boundaries of the units, including

the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(4) A description or delineation of any limited common elements not covered by § 42-1902.06(5), showing or designating the unit or units to which each is assigned;

(5) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § 42-1902.13. The description of the method whereby an assignment shall be made shall include the following information:

(A) The name of any person who may assign the limited common elements;

(B) The name of any person who must execute the assignment;

(C) Whether or not the deed to a condominium unit will reflect the assignment, if previously made; and

(D) If there is any limited common expense payable by the unit owners of a condominium unit to which the limited common elements pertain;

(6) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 42-1902.11; and

(7) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land the declaration shall also contain:

(1) A legally sufficient description of each convertible land within the condominium;

(2) A statement of the maximum number of units that may be created within each such convertible land;

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use;

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used and architectural style;

(5) A description of all other improvements that may be made in each convertible land within the condominium;

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein; and

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land; provided, that the plats and plans recorded

pursuant to subsections (a) and (b) of § 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (1), (4), (5), (6), and (7) of this subsection, and that paragraph (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium the declaration shall also contain:

(1) The explicit reservation of an option to expand the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be added to the condominium, henceforth referred to as "additional land";

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations;

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions regulating the order in which they may be added to the condominium;

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard;

(8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with paragraph (6) of this subsection, the declaration shall also state the maximum number of units that may be created on each portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with paragraph (6) of this subsection, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium;

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use;

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the

principal materials to be used, and architectural style, or a statement that no assurances are made in those regards;

(11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard; and

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14 may be used to supplement information furnished pursuant to paragraphs (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that paragraph (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(d) If the condominium is a contractable condominium the declaration shall also contain:

(1) The explicit reservation of an option to contract the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land";

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions clearly delineating such portions and regulating the order in which such portions may be withdrawn from the condominium; and

(6) A legally sufficient description of all of the submitted land to which the option to contract the condominium does not extend; provided, that the plats recorded pursuant to § 42-1902.14(a) may be used to supplement information furnished pursuant to paragraphs (4), (5) and (6) of this subsection, and that paragraph (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 42-1902.27.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth:

- (1) The instrument number and date of recordation of each such lease;
- (2) The date upon which each such lease is due to expire and the rights, if any, to renew such lease and the conditions pertaining to any such renewal;
- (3) A statement as to whether any land or improvements, or both, will be owned by the unit owners in fee simple, and if so, either:

(A) A description of the same, including without limitation a legally sufficient description of any such land; or

(B) A statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and

(4) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights; provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain:

- (1) A description of the permitted use or uses;
- (2) If less than all of those entitled to the use of all the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization; and
- (3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estates therein. No

such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 210, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(n), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1902.12, 42-1902.13, 42-1902.15, 42-1902.19, 42-1902.20, and 42-1903.02.

Prior Codifications. — 1981 Ed., § 45-1820.

1973 Ed., § 5-1220.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.11. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 42-1902.14 an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) of this section shall add up to 1 if stated as fractions or 100% if stated as percentages.

(d) If, in accordance with subsection (a) or (b) of this section, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) of this section shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing 3 columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be

altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 211, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1902.10.

Prior Codifications. — 1981 Ed., § 45-1821.
1973 Ed., § 5-1221.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

CASE NOTES

In general.

Trial court erred in awarding attorney fees related to condominium association's defense of unit owner's claim that association invalidly granted conservation easement to building's commonly owned facade, though claim was determined by summary judgment for association, in that association bylaws only allotted attorney fees upon unit owner default; attorney fees related to association's counterclaim to collect special assessment to help finance conveyance of conservation easement were proper. *Ochs v. L'Enfant Trust*, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

D.C. Code 1981, § 45-1848(b) vested authority in condominium association board of directors to grant conservation easement for commonly owned facade of building without approval by unit owners when no restriction on such authority was specified in association's condominium instruments. *Ochs v. L'Enfant*

Trust, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

Condominium association board of directors had authority under association bylaws to assess cost of conservation easement disproportionately among unit owners where one owner was not United States federal income taxpayer and could not reap charitable deduction benefits of easement. D.C. Code 1981, §§ 45-1848(b), 45-1852(b). *Ochs v. L'Enfant Trust*, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

Condominium association's execution of conservation easement for commonly owned facade of building did not deprive unit owner of vested property interest in violation of due process clause of Fifth Amendment in that only government action complained of was city council's promulgation of statute authorizing such easements. U.S. Const. Amend. 5; D.C. Code 1981, § 45-1848(b). *Ochs v. L'Enfant Trust*, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

§ 42-1902.12. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14; or

(2) Prohibits the creation of any units not described pursuant to § 42-1902.10(b)(6) (in the case of convertible lands) or § 42-1902.10(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) No allocation of interests in the common elements to any units created

within any convertible land or within any additional land shall be effective until plats and plans depicting such units are recorded pursuant to § 42-1902.14(c). The declarant shall reallocate the undivided interests in the common elements so that the units within the convertible land or additional land shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14. Promptly upon recording the amendment to the declaration, the declarant shall record an amendment to the plats and plans depicting the units created within the convertible land or additional land.

(c) If all of a convertible space is converted into common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 212, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1902.15, 42-1902.17, 42-1902.19, and 42-1903.01.

Prior Codifications. — 1981 Ed., § 45-1822.

1973 Ed., § 5-1222.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.13. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.

(a) All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium

instrument expressly provided otherwise prior to the first assignment of that limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the condominium unit owners concerned to the principal officer of the unit owners' association or to any officer the condominium instruments may specify. The officer to whom the application is made shall prepare and execute an amendment to the condominium instruments that reassigns any right or obligation with respect to the limited common element involved. The amendment shall be executed by the unit owners of the condominium units concerned and shall be recorded by the unit owners' association upon payment by the unit owners of reasonable costs for preparation and acknowledgment of the amendment.

(c) A common element not previously assigned as a limited common element shall be assigned only pursuant to § 42-1902.10(a)(5). The assignment shall be made as follows:

(1) If the assignment is made by the declarant, the amendment to the declaration that makes an assignment shall be prepared, executed, and recorded by the declarant and a copy sent to the unit owners' association. Unless the declaration provides otherwise, the amendment shall be executed by the condominium unit owner of the unit concerned. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 42-1902.10(a)(5).

(2) If the assignment is made by the unit owners' association, the amendment to the declaration that makes an assignment shall be prepared and executed by the principal officer of the unit owners' association or any other officer the condominium instruments may specify. An amendment shall be executed by the condominium unit owner of the unit concerned, and upon payment by the unit owner for the reasonable costs for the preparation and acknowledgment of the amendment, the amendment shall be recorded by the unit owners' association. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 42-1902.10(a)(5).

(3) Any assignment made prior to March 8, 1991, shall be considered valid if the assignment would be permitted pursuant to this section.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 213, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(o), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(e), 39 DCR 683.)

Section references. — This section is referred to in § 42-1902.10.

Prior Codifications. — 1981 Ed., § 45-1823.

1973 Ed., § 5-1223.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.14. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.

(a) There shall be recorded promptly upon recordation of the declaration, 1 or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than 1 such land the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than 1 withdrawable land, or more than 1 leased land, the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "not yet begun," and which, if any, have been begun but have not been substantially completed by the use of the phrase "not yet completed." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) of this section are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its

accuracy and compliance with the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

(b) There shall also be recorded, promptly upon recordation of the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting 1 or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all units or portions thereof depicted thereon have been substantially completed.

(c) When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new plats of survey conforming to the requirements of subsection (a) of this section. In any case where less than all of a convertible land is being converted, such plats shall show the location and dimensions of the remaining portion or portions of such land in addition to otherwise conforming with the requirements of subsection (a) of this section. At the same time, the declarant shall record, with regard to any structures on the land being converted, or added, either plans conforming to the requirements of subsection (b) of this section, or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to § 42-1902.15.

(d) When converting all or any portion of any convertible space into 1 or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c) of this section, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of § 42-1902.06(5) make such designations unnecessary.

(f) The Office of the Surveyor shall receive plats and plans filed pursuant to this chapter. Unless such plats and plans are filed pursuant to § 42-1902.15, the Office of the Surveyor shall ascertain whether such plats and plans contain the certification required by subsections (a) and (b) of this section. If plats and plans are filed pursuant to § 42-1902.15 or if plats and plans are filed with the required certification, the Office of the Surveyor shall record such plats and plans without further certification or review. If plats and plans filed pursuant to § 42-1902.15 are thereafter certified as required by this section, the Office of the Surveyor shall record such certification with such plats and plans without further certification or review.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 214, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.01, 42-1902.10, 42-1902.11, 42-1902.12, 42-1902.15, 42-1902.17, 42-1902.18, 42-1902.19, 42-1903.01, 42-1903.05, and 42-1904.03.

Prior Codifications. — 1981 Ed., § 45-1824.

1973 Ed., § 5-1224.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.15. Preliminary recordation of plans.

Plans previously recorded pursuant to the provisos set forth in subsections (b) and (c) of § 42-1902.10 may be used in lieu of new plans to satisfy in whole or in part the requirements of §§ 42-1902.12(b), 42-1902.17(b) and 42-1902.19 if certifications thereof are recorded by the declarant in accordance with § 42-1902.14(b); and if such certifications are so recorded, the plans which they certify shall be deemed recorded pursuant to § 42-1902.14(c) within the meaning of the 3 sections aforesaid.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 215, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1902.14.

Prior Codifications. — 1981 Ed., § 45-1825.

1973 Ed., § 5-1225.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.16. Easement for encroachments and support; where liability not relieved.

(a) To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement

of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, such easement shall not relieve unit owners of liability in cases of wilful and intentional misconduct by them or their agents or employees, nor shall the declarant or any contractor, subcontractor, or materialman be relieved of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

(b) Each unit and common element shall have an easement for support from every other unit and common element.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 216, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1826.

1973 Ed., § 5-1226.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.17. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.

(a) The declarant may convert all or any portion of any convertible land into 1 or more units or common elements, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 42-1902.14(c).

(b) The declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with § 42-1902.12(b). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(c) All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 217, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.15, and 42-1902.19.

Prior Codifications. — 1981 Ed., § 45-1827.

1973 Ed., § 5-1227.

Legislative history of Law 1-89. — For ical and Statutory Notes following § 42-1901.01.
legislative history of D.C. Law 1-89, see Histor-

§ 42-1902.18. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.

(a) The declarant may convert all or any portion of any convertible space into 1 or more units or common elements, or both, including without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 42-1902.14(d).

(b) Simultaneously with the recording of plats and plans pursuant to § 42-1902.14(d), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into 1 or more units in accordance with this section, the declarant shall prepare, execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with § 42-1902.26(d).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 218, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02 and 42-1902.26.

Prior Codifications. — 1981 Ed., § 45-1828.

1973 Ed., § 5-1228.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.19. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common elements.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to § 42-1902.14(c) and the recordation of an amendment to the declaration, duly

executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legally sufficient description of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of § 42-1902.12(b). Such amendment may create convertible or withdrawable lands within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to §§ 42-1902.10(d)(3) and 42-1902.17(c).

(Mar. 29, 1977, D.C. Law 1-89, title II, § 219, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.04, and 42-1902.15.

Prior Codifications. — 1981 Ed., § 45-1829.

1973 Ed., § 5-1229.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.20. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legally sufficient description of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to § 42-1902.10(d)(5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 220, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.02.

Prior Codifications. — 1981 Ed., § 45-1830.

1973 Ed., § 5-1230.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.21. Declarant's easement over common elements for purpose of improvements, etc.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 221, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.23, and 42-1903.09.

Prior Codifications. — 1981 Ed., § 45-1831.

1973 Ed., § 5-1231.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

CASE NOTES

ANALYSIS

Trespass.

Weight and sufficiency of evidence.

Trespass.

Trial court did not abuse its discretion by excluding evidence that bench trial in condominium owner's declaratory judgment claim found that townhouse owners did not have an easement of necessity on condominium owner's property, in trial of condominium owner's trespass and abuse of process claims against townhouse owners; condominium owner claimed evidence was relevant to establish that townhouse owners acted with malice as required in order for condominium owner to recover punitive damages, but condominium association had granted townhouse owners permission to enter limited common element assigned to condominium owner in order to repair outside wall of townhouse that was separated from condominium property by only 8.4 inches of yard space, evidence would not have been sufficient to establish that townhouse

owners acted in willful disregard of condominium owner's rights, and introduction of evidence might have confused jury. *Wood v. Neuman*, 979 A.2d 64, 2009 D.C. App. LEXIS 366 (2009).

Weight and sufficiency of evidence.

Evidence was sufficient to establish, in bench trial of condominium owner's declaratory judgment claim, that townhouse owners did not have a common-law easement of necessity to enter area where owner of neighboring ground floor condominium unit had a garden/patio in order to waterproof the westerly wall of their townhouse; though condominium association granted townhouse owners permission to enter the limited common element assigned to condominium owner and townhouse owners only had 8.4 inches of yard space between their townhouse and condominium property, there was evidence that the need for an easement arose from the inability of townhouse owners to get along with condominium owner. *Wood v. Neuman*, 979 A.2d 64, 2009 D.C. App. LEXIS 366 (2009).

§ 42-1902.22. Sales offices, model units, etc.; authorization; when become common elements.

The declarant and the declarant's authorized agents, representatives, and employees may maintain sales offices, management offices, and model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office, management office, or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office, management office, or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 222, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.23, 42-1902.30, and 42-1903.09.

Prior Codifications. — 1981 Ed., § 45-1832.

1973 Ed., § 5-1232.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.23. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. In the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement that requires the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done with regard to the condominium or any portion of the condominium, this subsection shall not be construed to nullify, limit, or otherwise affect that obligation.

(b) The declarant shall complete all improvements labeled "not yet completed" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "not yet begun" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ 42-1902.21 and 42-1902.22, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 223, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(p), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(f), 39 DCR 683.)

Prior Codifications. — 1981 Ed., § 45-1833.

1973 Ed., § 5-1233.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical

and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.24. Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, if a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 42-1902.25.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 224, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1834.

1973 Ed., § 5-1234.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

CASE NOTES

In general.

Remand of dispute between condominium unit owner and board of directors of condominium association was required to permit trial court to determine reasonableness of board's

decision to disapprove the enclosure of unit owner's balcony. *Bolandz v. 1230-1250 Twenty-Third St. Condo. Unit Owners Ass'n*, 849 A.2d 1010, 2004 D.C. App. LEXIS 248 (2004).

§ 42-1902.25. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a)(1) If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

(b) If the unit owners of adjoining units whose mutual boundaries may be relocated, desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute the appropriate instruments pursuant to subsections (c), (d) and (e) of this section.

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain words of conveyance between those unit owners. If the unit owners of the units involved have specified in their written application, a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the unit owners of the units involved have specified in their written application reasonable allocations as between the units involved of the aggregate number of votes in the unit owners' association, rights to future surplus funds, or liabilities for future common expenses not specially assessed, then an amendment to the bylaws shall reflect any such reallocations.

(e) Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

(1) By a registered land surveyor in the case of any plat; and

(2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections have been prepared, executed, and acknowledged, the instruments shall be executed and acknowledged by the unit owners of the units concerned and, upon payment by the unit owners of reasonable costs for the preparation and acknowledgment of the instruments, the instruments shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the relocation of boundaries effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by § 42-1902.26. Section 42-1902.26 shall apply only to such subdivisions of units as are intended to result in the creation of 2 or more units in place of the subdivided unit.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 225, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(q), 38 DCR 261.)

Section references. — This section is referred to in § 42-1902.24.

Prior Codifications. — 1981 Ed., § 45-1835.

1973 Ed., § 5-1235.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.26. Subdivision of units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.

(a)(1) If the condominium instruments expressly permit the subdivision of any units; then such units may be subdivided in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) No unit shall be subdivided unless the condominium instruments expressly permit it.

(b) If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d) and (e) of this section.

(c) An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common elements assigned to the subdivided unit exclusively should be assigned to 1 or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

(d) An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

(e) Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be

prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

- (1) By a registered land surveyor in the case of any plat; and
- (2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, the instruments shall be executed by the subdivider and, upon payment by the subdivider of reasonable costs for the preparation and acknowledgment of the instrument, shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the subdivision effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Notwithstanding the provisions of §§ 42-1901.03 and 42-1902.18(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 226, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(r), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1902.18 and 42-1902.25.

Prior Codifications. — 1981 Ed., § 45-1836.

1973 Ed., § 5-1236.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1902.27. Amendment of instruments.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon recordation if the amendment has been executed by the declarant. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred by this section.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which $\frac{2}{3}$ of the votes in the unit owners' association pertain, or any larger majority that the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than 1 year after the amendment is recorded.

(d) Any amendment to the condominium instruments required by this chapter to be recorded by the unit owners' association shall be prepared, executed, recorded, and certified on behalf of the unit owners' association by any officer designated for that purpose or, in the absence of designation, by the presiding officer of the executive board.

(e) Except to the extent expressly permitted or required by other provisions of this chapter, an amendment to the condominium instruments may not:

- (1) Create or increase special declarant rights;
- (2) Increase the number of units;
- (3) Change the boundaries of any unit;
- (4) Change the undivided interest in the common elements, the liability for common expenses, the right to surplus funds, or the number of votes in the unit owners' association that pertains to any unit; or
- (5) Change the uses to which any unit is restricted, in the absence of the unanimous consent of the unit owners.

(f)(1) Notwithstanding any other provision of this section, within 5 years after the recordation of a condominium instrument that contains or creates a mistake, inconsistency, error, or ambiguity, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to:

(A) Correct a mathematical mistake, an inconsistency, or a scrivener's error; or

(B) Clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or right to surplus funds, or the number of votes in the unit owners' association that pertain to a unit.

(2) An amendment or supplement may not materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. The principal officer of the unit owners' association may unilaterally execute and record a corrective amendment or supplement upon a vote of $\frac{2}{3}$ of the members of the executive board. Any corrective amendment or supplement shall be validated to the extent that the corrective amendment or supplement would have been permitted by this subsection.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 227, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(s), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(g), 39 DCR 683.)

Section references. — This section is referred to in § 42-1902.10.

Prior Codifications. — 1981 Ed., § 45-1837.

1973 Ed., § 5-1237.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2(g) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Emergency legislation. — For temporary

amendment of section, see § 2(g) of the Condominium Act of 1976 Technical and Clarifying Emergency Amendment Act of 1991 (D.C. Act 9-47, June 24, 1991, 38 DCR 4082).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.28. Termination of condominium.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. A termination shall become effective upon recordation if the termination has been executed by the declarant and recorded in the Office of the Surveyor. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated by the agreement of unit owners of units to which $\frac{4}{5}$ of the votes in the unit owners' association pertain, or any larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement or ratification in the same manner as a deed by the requisite number of unit owners. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association pertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. A termination agreement and any ratification of the termination agreement shall be effective only upon recordation in the Office of the Surveyor.

(d) In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium shall be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(e) In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale.

(f) On behalf of the unit owners, the unit owners' association may contract for the disposition of real estate in the condominium, but the contract shall not

be binding on the unit owners until approved pursuant to subsections (b) and (c) of this section. If any real estate in the condominium shall be sold following termination, title to the real estate, upon termination, shall vest in the unit owners' association as trustee for the holders of all interests in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (i) of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the real estate, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of occupancy by the unit owner or his or her successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

(g) If the real estate that constitutes the condominium shall not be sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the real estate in the condominium shall vest in the unit owners upon termination as tenants in common in proportion to the unit owners' respective interests as provided in subsection (i) of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his or her successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

(h) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lienholders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lienholder. Any other creditor of the unit owners' association shall be treated as if he or she had perfected a lien on the units immediately before termination.

(i) The respective interests of unit owners referred to in subsections (f), (g), and (h) of this section shall be as follows:

(1) Except as provided in paragraph (2) of this subsection, the respective interests of a unit owner shall be the fair market values of the unit owner's limited common elements, and common element interests immediately before the termination, as determined by an independent appraiser selected by the unit owners' association. The decision of the independent appraiser shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which $\frac{1}{4}$ of the votes in the unit owners' association. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of

the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

(j) Except as provided in subsection (k) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw the portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

(k) If a lien or encumbrance against a portion of the real estate that comprises the condominium has priority over the condominium instruments, and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the real estate subject to the lien or encumbrance from the condominium.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 228, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(t), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(h), 39 DCR 683.)

Section references. — This section is referred to in § 42-1903.10.

Prior Codifications. — 1981 Ed., § 45-1838.
1973 Ed., § 5-1238.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(h) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1902.29. Condominium lease; recordation; terms; leasehold payments; increases; sale or assignment; offer to unit owners' association; renewal.

(a) The declarant of a leasehold condominium shall record with the condominium instruments any lease pursuant to which the condominium is a leasehold condominium ("condominium lease"); provided, however, it shall be sufficient for the declarant to record a statement of the book, page and date of recordation of such lease if such lease has previously been recorded among the land records of the District of Columbia. Condominium instruments establishing a leasehold condominium containing more than 3 residential units shall

not be effective unless the condominium lease(s) comply with the requirements of subsections (b), (c) and (d) of this section.

(b)(1) If a condominium is a leasehold condominium subject to the provisions of this section, any condominium lease shall be for a term of not less than 99 years with a right of renewal for consecutive additional terms of not less than 99 years. The lease shall provide for level, periodic payments which may not be increased during the first 10 years of the leasehold term. If provided in the lease, the lessor may petition the Mayor for an increase in leasehold payments to be effective beginning with the 11th year of the leasehold term, and the Mayor shall approve such increase if he finds that:

(A) Costs borne by the lessor in connection with the lease have increased; or

(B) Costs of living, as measured by a standard statistical index computed and published by the United States government and available for the period of the leasehold term, have increased; and

(C) The increase in the lease payments is in reasonable proportion to such increased costs.

(2) An increase in lease payments shall be effective for a minimum period of 10 years, after which the lessor may again petition for an increase subject to the provisions of this subsection. The lessor shall not require or accept lease payments which do not meet the requirements of this subsection.

(c) A lessor of a condominium lease may sell or assign the lease only after offering the unit owners' association of the condominium the right to purchase the leasehold estate at a price and on terms offered to any other prospective purchaser. The lessor shall give the unit owners' association a period of at least 60 days within which to accept or reject the offer.

(d) The lessor of a condominium lease shall give the lessee of such lease a statement not less than 5 years prior to the expiration of such lease of whether the lease is to be renewed and on what terms the lease is to be renewed. If the lessor offers to renew the lease, the lessor shall give the lessee a period of at least 180 days within which to accept or reject the offer.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 229, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1839. legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.
1973 Ed., § 5-1239.

Legislative history of Law 1-89. — For

§ 42-1902.30. Transfer of special declarant rights.

(a) A special declarant right created or reserved under this chapter may not be transferred except by an instrument that evidences the transfer recorded in the same manner as the condominium instruments. The instrument shall not be effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

(1) A transferor shall not be relieved of any obligation or liability that arises before the transfer and shall remain liable for any warranty obligation

imposed upon him or her by this chapter. Lack of privity shall not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to a special declarant right is an affiliate of a declarant, the transferor shall be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

(3) If a transferor retains a special declarant right, and transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall be liable for any obligation or liability imposed on a declarant by this chapter or by the condominium instruments that relates to the retained special declarant rights and that arises after the transfer.

(4) A transferor shall have no liability for any act or omission or any breach of a contractual or warranty obligation that arises from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure, mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of any unit owned by a declarant or real estate in a condominium subject to development rights, a person who acquires title to all the real estate being foreclosed or sold, upon his or her request, shall succeed to all special declarant rights related to the real estate held by the declarant, or to any rights reserved in the condominium instruments pursuant to § 42-1902.22 and held by the declarant to maintain models, sales offices, and signs. The judgment or instrument that conveys title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, the term "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of all units and other real estate in a condominium owned by a declarant:

(1) The declarant shall cease to have any special declarant rights; and

(2) The period of declarant control shall terminate unless the judgment or instrument that conveys title provides for transfer of all special declarant rights held by the declarant to a successor declarant.

(e) The liability or obligation of a person who succeeds to special declarant rights shall be as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant shall be subject to any obligation or liability imposed on the transferor by this chapter or the condominium instruments.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, shall be subject to any obligation or liability imposed by this chapter or the condominium instruments:

(A) On a declarant that relates to his or her exercise or nonexercise of special declarant rights; or

(B) On his or her transferor, other than:

- (i) A misrepresentation by a previous declarant;
- (ii) A warranty obligation on improvements made by a previous declarant or made before the condominium was created;
- (iii) A breach of a fiduciary obligation by a previous declarant or his or her appointee to the executive board; or
- (iv) Any liability or obligation imposed on the transferor's acts or omissions after the transfer.

(3) A successor who is not an affiliate of a declarant and whose sole right is a reservation in the condominium instruments to maintain models, sales offices, and signs may not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except a liability or obligation that arises under subchapter IV of this chapter that relates to disposition by the successor.

(4) If the transferor is not an affiliate of the successor to special declarant rights and the successor succeeded to all the special declarant rights pursuant to a deed in lieu of foreclosure or a judgment or instrument that conveys title to units under subsection (c) of this section, the successor may declare his or her intention in a recorded instrument to hold the rights solely for transfer to another person. Until the successor transfers all special declarant rights to any person who acquires title to any unit owned by the successor, or until the successor records an instrument that permits exercise of all special declarant rights, the successor may not exercise the special declarant rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of § 42-1903.02 for the duration of any period of declarant control. Any attempted exercise of special declarant rights other than a right held by the successor's transferor to control the executive board shall be void. For the period that a successor declarant may not exercise special declarant rights under this subsection, he or she shall not be subject to any liability or obligation as a declarant other than liability or obligation as a declarant for his or her acts or omissions under § 42-1903.02.

(f) Nothing in this section shall subject any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than a claim or obligation that arises under this chapter or the condominium instruments.

(Mar. 29, 1977, D.C. Law 1-89, title II, § 230, as added Mar. 8, 1991, D.C. Law 8-233, § 2(u), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(i), 39 DCR 683.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1839.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(i) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

*Subchapter III. Control and Governance of Condominiums.***§ 42-1903.01. Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; amendment and contents thereof; responsibility for insurance on common elements.**

(a) There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive board. The executive board, if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to § 42-1903.02(a), be elected by the unit owners unless the unit owners vote to amend the bylaws to provide otherwise. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

(c) The bylaws shall provide whether or not there shall be officers in addition to the members of the executive board. If there are to be such additional officers, the bylaws shall specify the powers and responsibilities of the same, the manner of their selection and removal, their number and their terms. the bylaws may delegate to such additional officers, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association.

(d) In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § 42-1902.12, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to subsections (a) and (b) of § 42-1902.14; or shall abolish the votes appertaining to former units and reallocate their rights to future surplus funds, and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

(e) Repealed.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 301, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(v), 38 DCR 261.)

Cross references. — Condominium or unit owners association defined, homestead housing preservation, see § 42-2103.

Section references. — This section is referred to in §§ 42-1901.02 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1841.
1973 Ed., § 5-1241.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

In general.

Condominium property is not protected by implied warranty of habitability. *Green v. Con-*

dominium Mgt., Inc., 114 WLR 157 (Super. Ct. 1986).

§ 42-1903.02. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive board, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Mayor according to § 42-1904.06. The time limit initially set by the condominium instruments shall not exceed 3 years in the case of an expandable condominium or a condominium containing convertible land, or 2 years in the case of any other condominium containing any convertible land, or 2 years in the case of any other condominium. Such period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

(b)(1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, no contract or lease entered into with the declarant or an affiliate of a declarant, other than a lease subject to § 42-1902.10(e), management contract, employment contract, or lease of a recreational or parking area or facility, which is directly or indirectly made by or on behalf of the unit owners' association or the unit owners as a group, shall be entered into for a period in excess of 2 years. Any contract or agreement entered into after March 8, 1991, may be terminated

without penalty by the unit owners' association or the executive board of the unit owners' association upon not less than 90 days written notice to the other party.

(2) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, any contract, lease or agreement, other than those subject to the provisions of paragraph (1) of this subsection, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

(c) If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this subchapter or the condominium instruments require or permit action by the unit owners' association, its executive board, or any officer or officers.

(d) Notwithstanding subsection (a) of this section, the bylaws shall provide that:

(1) Not later than the time that units to which 25% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 25% of the members of the executive board shall be selected by unit owners other than declarant; and

(2) Not later than the time units to which 50% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 33⅓% of the members of the executive board shall be selected by unit owners other than declarant.

(e) Repealed.

(f) This section shall be strictly construed to protect the rights of the unit owners.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 302, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(w), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.02, 42-1902.02, 42-1902.30, 42-1903.01, 42-1903.09, 42-1903.18, and 42-1904.07.

Prior Codifications. — 1981 Ed., § 45-1842.

1973 Ed., § 5-1242.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.03. Meetings.

Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit owners' association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled

meeting and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place, and purpose of the meeting. The notice shall be sent by the United States mail to all unit owners of record at the address of their respective units and to any other address that the unit owners have designated to the officer. In the alternative, notice may be hand-delivered by the officer, if the officer certifies in writing that the notice was delivered to the unit owner.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 303, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(x), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1903.10 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1843.

1973 Ed., § 5-1243.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.04. Meetings — Executive board; quorums.

(a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than the thirty-three and one-third percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 25 percent.

(b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one half of the votes in that body are present at the beginning of such meeting.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 304, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(y), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1903.05 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1844.

1973 Ed., § 5-1244.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.05. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

(a) The bylaws may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 42-1902.14 a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to § 42-1903.12(c).

(b) Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

(c) Since a unit owner may be more than 1 person, if only 1 of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than 1 of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any 1 of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

(d) Notwithstanding any contrary provisions of the condominium instruments, this subsection establishes the requirements for the validity of proxies. The votes that pertain to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in a case where the unit owner is more than 1 person, by or on behalf of all those persons. A proxy may be revoked if a unit owner or 1 of the unit owners, in the case of a unit owned by more than 1 person, gives actual notice of revocation to the person who presides over the meeting. A proxy shall be void if the proxy is not dated, if the proxy purports to be revocable without notice, or if the signatures of any person executing the proxy has not been witnessed by a person who shall sign his or her full name and address. A proxy shall terminate automatically upon the final adjournment of the first meeting held on or after the date of the proxy, but shall remain in effect during any recess or temporary adjournment of the meeting.

(e) If 50% or more of the votes in the unit owners' association appertain to 25% or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

(f) Notwithstanding anything in this section to the contrary, during any time that the unit owners' association is the owner of any condominium unit, the votes in the unit owners' association that pertain to the condominium unit shall be included in any calculation to determine the existence of a quorum at any meeting of the unit owners' association pursuant to § 42-1903.04, but otherwise shall be deemed to be cast in proportion to the affirmative and negative votes cast by all unit owners other than the unit owners' association at any meeting.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 305, 23 DCR 9532b; Mar. 8, 1991,

D.C. Law 8-233, § 2(z), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(j), 39 DCR 683.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1845.

1973 Ed., § 5-1245.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1903.06. Officers; disqualification.

(a) If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee or for a term or terms of 6 months or more shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of § 42-1902.06(1), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person, which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) of this section were it a natural person holding such office.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 306, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1846.

1973 Ed., § 5-1246.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1903.07. Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof; warranty against structural defects; limitations upon actions; bond or other security.

(a) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair,

renovation, restoration, and replacement of the condominium shall belong: (1) to the unit owners' association in the case of the common elements; and (2) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through such unit owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may repair or replace specified unit components using common expense funds, if failure to make the repair or replacement would have a material adverse effect upon the health, safety, or welfare of the unit owners, the common elements, or the income and common expenses of the unit owners' association. The repair or replacement may be at the expense of the unit owners' association or, if a limited number of units are affected, at the expense of the unit owners affected.

(b) Repealed.

(c) Repealed.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 307, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(aa), 38 DCR 261.)

Section references. — This section is referred to in § 42-1904.04.

Prior Codifications. — 1981 Ed., § 45-1847.

1973 Ed., § 5-1247.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(j) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

ANALYSIS

In general.

Pleadings.

Remand.

In general.

Even though many unit owners in converted building might have been previous residents of building, they were entitled to rely on good faith and expertise of defendants to provide quality renovations, when those former tenants made their ultimate decisions to purchase condominium units outright. D.C. Code 1981, §§ 45-1801 et seq., 45-1847(b). *Towers Tenant Asso. v. Towers Ltd. Partnership*, 563 F. Supp. 566, 1983 U.S. Dist. LEXIS 17156 (1983).

Statutes placing responsibility for maintenance and repair of common elements of condominium to unit owners' association and which permitted action to be filed against association for tort for wrong done by agents of association to area which association has responsibility for maintaining did not provide basis to require condominium association or its management company to exercise duty of reasonable care to make attic area safe for uses for which it was not structurally designed or constructed. D.C. Code 1981, §§ 45-1847(a), 45-1849(a). *Lacy v. Sutton Place Condo. Ass'n*, 684 A.2d 390, 1996 D.C. App. LEXIS 230 (1996).

nance and repair of common elements of condominium to unit owners' association and which permitted action to be filed against association for tort for wrong done by agents of association to area which association has responsibility for maintaining did not provide basis to require condominium association or its management company to exercise duty of reasonable care to make attic area safe for uses for which it was not structurally designed or constructed. D.C. Code 1981, §§ 45-1847(a), 45-1849(a). *Lacy v. Sutton Place Condo. Ass'n*, 684 A.2d 390, 1996 D.C. App. LEXIS 230 (1996).

Pleadings.

Association representing unit owners in building which was converted to condominium ownership stated claim upon which relief could

be granted in connection with refurbishing and reconstruction of building. D.C. Code 1981, §§ 45-1801 et seq., 45-1847(b). *Towers Tenant Asso. v. Towers Ltd. Partnership*, 563 F. Supp. 566, 1983 U.S. Dist. LEXIS 17156 (1983).

Remand.

Where court did not give sufficient weight to condominium unit owners' association's right of access through individual units where such

access was "reasonably necessary" to enable association to carry out its obligation to repair common element, remand was required to determine basis for association's installation of new windows in each individual unit as part of major repair and renovation project. D.C. Code 1981, § 45-1847(a). *Marlyn Condominium, Inc. v. McDowell*, 576 A.2d 1346, 1990 D.C. App. LEXIS 149 (1990).

§ 42-1903.08. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements.

(a) Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified herein, the unit owners' association shall have the:

- (1) Power to adopt and amend bylaws or rules and regulations;
- (2) Power to adopt and amend a budget for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
- (3) Power to hire or discharge a managing agent or other employees, agents, or independent contractors;
- (4) Power to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium;
- (5) Power to make a contract or incur liability;
- (6) Power to regulate the use, maintenance, repair, replacement, or modification of common elements;
- (7) Power to cause an additional improvement to be made as a part of the common elements;
- (8) Power to acquire, hold, encumber, or convey in the name of the unit owners' association any right, title, or interest to real or personal property;
- (9) Power to grant an easement, lease, license, or concession through or over the common elements;
- (10) Power to impose on and receive from individual unit owners any payment, fee, or charge for the use, rental, or operation of the common elements or for any service provided to unit owners;
- (11) Power to impose a charge for late payment of an assessment and, after notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;
- (12) Power to impose a reasonable charge for the preparation and recording of an amendment to the condominium instruments, a statement concerning the resale of units required by § 42-1904.11, or a statement of an unpaid assessment;
- (13) Power to provide for the indemnification of officers or the executive board of the unit owners' association and maintain liability insurance for directors or officers;

(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments, but only to the extent the condominium instruments expressly so provide;

(15) Power to exercise any other power conferred by the condominium instruments;

(16) Power to exercise any other power that may be exercised in the District of Columbia by a legal entity of the same type as the unit owners' association; and

(17) Power to exercise any other power necessary and proper for the governance or operation of the unit owners' association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof.

(c) The condominium instruments may not impose any limitation on the power of the unit owners' association to deal with the declarant that is more restrictive than the limitation imposed on the power of the unit owners' association to deal with any other person.

(d) In the performance of duties, an officer or member of the executive board shall exercise the care required of a fiduciary of the unit owners.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 308, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(bb), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1848.

1973 Ed., § 5-1248.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-

1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

ANALYSIS

Amendment of complaint.

Attorney fees.

Common elements.

Conservation easements.

Construction and application.

Regulations and bylaws.

Amendment of complaint.

Trial court did not abuse its discretion in denying motion by condominium unit owner and its principal to amend the complaint a third time in action against condominium owners' association for violation of the Condominium Act and condominium instruments, failure

to make repairs, retaliation, and breach of fiduciary duty, among other claims, where discovery was closed, litigation had been under way for three years, motion came at an unnecessarily late stage in the proceeding, principal and owner had twice been granted leave to amend the complaint, and they were not prejudiced by the denial. *Harnett v. Washington Harbour Condominium Unit Owners' Ass'n*, 2012 WL 2921943 (2012).

Attorney fees.

Award of \$157,119 in attorney's fees to condominium unit owner, as prevailing party in action seeking declaratory judgment, which overturned condominium association's decision

requiring owner to remove an enclosure he had installed on his balcony without board's permission, was reasonable; owner outlined fees by stages in proceeding, neither party made representations about prevailing market rate for hourly fees, and thus, Court of Appeals would presume that rate requested by owner was reasonable, and association failed to bring any specific challenges to the reasonableness of fees requested. 1230-1250 Twenty-Third St. Condo. Unit Owners Ass'n v. Bolandz, 978 A.2d 1188, 2009 D.C. App. LEXIS 358 (2009).

Common elements.

Condominium owners' association had powers under bylaws to grant a lease for a parking space in an area that had been a common element, although bylaws referred only to easements and licenses, where bylaws did not mention, much less expressly prohibit, association's board from exercising the broader power granted by the Condominium Act to grant an easement, lease, license, or concession through or over the common elements. Harnett v. Washington Harbour Condominium Unit Owners' Ass'n, 2012 WL 2921943 (2012).

Conservation easements.

Condominium association's execution of conservation easement for commonly owned facade of building did not deprive unit owner of vested property interest in violation of due process clause of Fifth Amendment in that only government action complained of was city council's promulgation of statute authorizing such easements. U.S. Const. Amend. 5; D.C. Code 1981, § 45-1848(b). Ochs v. L'Enfant Trust, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

D.C. Code 1981, § 45-1848(b) vested authority in condominium association board of directors to grant conservation easement for commonly owned facade of building without approval by unit owners when no restriction on such authority was specified in association's condominium instruments. Ochs v. L'Enfant Trust, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

Condominium association board of directors had authority under association bylaws to assess cost of conservation easement disproportionately among unit owners where one owner was not United States federal income taxpayer and could not reap charitable deduction benefits of easement. D.C. Code 1981, §§ 45-1848(b), 45-1852(b). Ochs v. L'Enfant Trust, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

Construction and application.

Statute permitting condominium to manage and provide for use, rental, and operation of common elements except to extent expressly prohibited by condominium instruments and subject to any limitations specified therein did not authorize condominium association's board

of directors to impose move-in fee where condominium documents provided for pro rata allocation of expenses among all units owners except in cases of owner negligence, misuse, or neglect; the documents by establishing pro rata assessment as exclusive means for recovering common elements expenses created clear limitation on authority to employ alternative assessment methods. D.C. Code 1981, § 45-1848. Westbridge Condominium Asso. v. Lawrence, 554 A.2d 1163, 1989 D.C. App. LEXIS 34 (1989).

Statute authorizing condominium to make individual assessment for common expenses benefiting less than all units or caused by conduct of less than all those entitled to occupy elements requires express authorization in condominium documents before condominium's governing body may levy assessments against individual unit owners, while statute permitting condominium to manage and provide for use, rental, and operation of common elements only requires absence of any limitation or express prohibition in condominium documents. D.C. Code 1981, §§ 45-1848, 45-1852(b). Westbridge Condominium Asso. v. Lawrence, 554 A.2d 1163, 1989 D.C. App. LEXIS 34 (1989).

Regulations and bylaws.

While the governing body of a condominium has broad authority to regulate the internal affairs of the development, this power is not without limit; ultimately, if a rule is reasonable, the association can adopt it, but if not, it cannot. Bolandz v. 1230-1250 Twenty-Third St. Condo. Unit Owners Ass'n, 849 A.2d 1010, 2004 D.C. App. LEXIS 248 (2004).

Condominium instruments, including bylaws, are a contract that governs legal rights between condominium association and unit owners. Lacy v. Sutton Place Condo. Ass'n, 684 A.2d 390, 1996 D.C. App. LEXIS 230 (1996).

Bylaws of condominium association are form of private lawmaking, and individuals who choose this form of ownership, by agreement, forego some of traditional incidents of ownership. Lacy v. Sutton Place Condo. Ass'n, 684 A.2d 390, 1996 D.C. App. LEXIS 230 (1996).

Governing body of condominium, though endowed with broad authority to regulate internal affairs of development, may not adopt "unreasonable" rules. Johnson v. Hobson, 505 A.2d 1313, 1986 D.C. App. LEXIS 514 (1986).

Parking regulation promulgated by governing body of condominium, under which unlicensed or unregistered cars could be towed from condominium lot, was not unreasonable exercise of body's authority, where body had been granted authority to regulate parking at condominium, where regulation was passed only after body received numerous complaints about unavailability of parking spaces, where regulation was not applied discriminatorily or unfairly, where regulation was adopted pursu-

ant to proper procedures, and where condominium owners received 12 months notice before it

was put into effect. *Johnson v. Hobson*, 505 A.2d 1313, 1986 D.C. App. LEXIS 514 (1986).

§ 42-1903.09. Tort and contract liability of association and declarant; judgment liens against common property and individual units.

(a) An action for tort alleging a wrong done: (1) by any agent or employee of the declarant or of the unit owners' association; or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of ownership of an undivided interest in the common elements or by reason of membership in the association or status as an officer.

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 42-1902.21 and 42-1902.22.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to § 42-1903.02(a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to § 42-1903.12(c), but no unit owner shall be otherwise liable on account of a judgment and, after payment by the unit owner of his or her proportionate share, the association shall not assess or have a lien against the unit owner's condominium unit for any portion of the common expenses incurred in connection with the lien. If after payment by a unit owner of a proportionate share, the unit owners' association elects to pay the balance of the judgment from common funds, the unit owners' association shall reimburse the unit owner for the amount the unit owner paid separately. Any judgment shall be satisfied first out of the property of the unit owners' association. The judgment shall be otherwise subject to the provisions of Title 15.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 309, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(cc), 38 DCR 261; Apr. 18, 1996, D.C. Law 11-110, § 48(a), 43 DCR 530.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1849.
1973 Ed., § 5-1249.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For

legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995 and January 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

CASE NOTES

In general.

Statutes placing responsibility for maintenance and repair of common elements of condominium to unit owners’ association and which permitted action to be filed against association for tort for wrong done by agents of association to area which association has responsibility for maintaining did not provide basis to require

condominium association or its management company to exercise duty of reasonable care to make attic area safe for uses for which it was not structurally designed or constructed. D.C. Code 1981, §§ 45-1847(a), 45-1849(a). *Lacy v. Sutton Place Condo. Ass’n*, 684 A.2d 390, 1996 D.C. App. LEXIS 230 (1996).

§ 42-1903.10. Insurance obtained by association; notice to unit owners.

(a) When any insurance policy has been obtained by or on behalf of the unit owners’ association, written notice of the procurement thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners’ association. Such notices shall be sent in accordance with the provisions of the last sentence of § 42-1903.03.

(b) Commencing not later than the time of the first conveyance of a condominium unit to a person other than a declarant, the unit owners’ association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than 90% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the condominium instruments that covers all occurrences commonly insured against for death, bodily injury, or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(c) If a building contains units that have horizontal boundaries described in the condominium instruments, the insurance maintained under subsection (b) (1) of this section, to the extent reasonably available, shall include the units, but need not include an improvement or betterment installed by unit owners.

(d) If the insurance described in subsections (b) and (c) of this section is not reasonably available, the unit owners’ association shall promptly cause notice of the unavailability of insurance to be hand-delivered or sent prepaid by the United States mail to all unit owners. The condominium instruments may require the unit owners’ association to carry any other insurance the unit

owners' association deems appropriate to protect the unit owners' association or the unit owners.

(e) An insurance policy carried pursuant to subsection (b) of this section shall provide that:

(1) A unit owner is an insured person under the policy with respect to liability that arises out of the unit owner's interest in the common elements or membership in the unit owner's association;

(2) The insurer waives the insurer's right to subrogation under the policy against any unit owner or member of the unit owner's household;

(3) An act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the unit owners' association, shall not void the policy or be a condition to recovery under the policy;

(4) If at the time of loss under the policy, there is other insurance in the name of a unit owner that covers the same risk covered by the policy, the unit owners' association's policy shall provide primary insurance; and

(5) If the unit owners' association brings suit against a unit owner, or vice versa, with respect to any loss, the insurer shall provide for the defense of the defendant.

(f) Any loss covered by the property policy under subsections (b)(1) and (c) of this section shall be adjusted with the unit owners' association, but the insurance proceeds for the loss shall be payable to any insurance trustee designated to receive payments or otherwise to the unit owners' association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the unit owners' association shall hold any insurance proceeds in trust for unit owners or lienholders as the unit owners' or lienholders' interests may appear. Subject to the provisions of subsection (i) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property. A unit owner or lienholder shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(g) An insurance policy issued to the unit owners' association shall not prevent a unit owner from obtaining insurance for his or her own benefit.

(h) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the unit owners' association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer that issues the policy may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the unit owners' association, any unit owner, and any mortgagee or beneficiary under the deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(i) Any portion of the condominium for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless the condominium is terminated, repair or replacement would be illegal under any health or safety statute, rule, or regulation, or 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote

not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If the entire condominium is not repaired, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium. The insurance proceeds attributable to the units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertained, or to lienholders, as their interests may appear. The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the interests in the common elements appertaining to all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests shall be automatically reallocated upon the vote as if the unit had been condemned under § 42-1901.06, and the unit owners' association promptly shall prepare, execute, and record an amendment to the condominium instruments reflecting the reallocations. Notwithstanding the provisions of this subsection, § 42-1902.28 governs the distribution of insurance proceeds if the condominium is terminated.

(j) The bylaws shall specify insurance coverage and limits with respect to any insurance policy that may be required on the common elements and shall indicate who shall be responsible for payment of any deductible amount in connection with the insurance policy.

(k) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 310, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(dd), 38 DCR 261; Apr. 18, 1996, D.C. Law 11-110, § 48(b), 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 45-1850.

1973 Ed., § 5-1250.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For

legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 42-1903.09.

§ 42-1903.11. Rights to surplus funds.

Unless otherwise provided in the condominium instruments, any surplus funds of the unit owners' association that remain after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to the unit owners' liabilities for common expenses or credited to the unit owners to reduce the unit owners' future common expense assessments.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 311, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ee), 38 DCR 261.)

Prior Codifications. — 1981 Ed., § 45-1851.
1973 Ed., § 5-1251.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.12. Liability for common expenses; special assessments; proportionate liability fixed in by-laws; installment payment of assessments; when assessment past due; interest thereon.

(a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than 1 condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

(b) To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases.

(c) The amount of any common expense not specially assessed pursuant to subsection (a) or (b) of this section shall, subject to the provisions of subsection (f) of this section, be assessed against the condominium units, including the condominium units owned by the declarant, in accordance with the provisions of the condominium instruments. The bylaws may establish the fraction or percentage of liability for such expenses appertaining to each condominium unit proportionate to either the size or par value of such condominium unit. Otherwise, the bylaws shall allocate to each such condominium unit an equal liability for such expenses, subject to the following exception: Each convertible space shall be allocated a liability for common expenses proportionate to the size of each such space, vis-a-vis the aggregate size of all units, while the remaining liability for common expenses shall be allocated equally to the other units. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) If the condominium instruments provide for any common expense assessments to be paid in installments, such instruments may further provide that upon default in the payment of any 1 or more of such installments, the

balance thereof shall be accelerated, or that the said balance may be accelerated at the option of the unit owners' association, its executive board, or the managing agent.

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the 15th day from the day such assessment or installment thereof first became due and payable, and any past due assessment or installment thereof shall bear interest at the lesser of 10 percent per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on first mortgage loans at the time such assessment or installment became past due.

(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period not to exceed 1 year from the conveyance of the first condominium unit to a purchaser. If the declarant elects, common expenses shall not be assessed against any condominium unit or imposed upon or collected from any unit owner, and the declarant shall pay all the costs including the costs of any contributions to reserve accounts as set forth in the budget of the condominium described in § 42-1904.04.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 312, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ff), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1902.02, 42-1903.05, 42-1903.09, and 42-1903.13.

Prior Codifications. — 1981 Ed., § 45-1852.

1973 Ed., § 5-1252.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

In general.

Statute authorizing condominium to make individual assessment for common expenses benefiting less than all units or caused by conduct of less than all those entitled to occupy elements requires express authorization in condominium documents before condominium's governing body may levy assessments against individual unit owners, while statute permitting condominium to manage and provide for use, rental, and operation of common elements only requires absence of any limitation or express prohibition in condominium documents. D.C. Code 1981, §§ 45-1848, 45-1852(b). *Westbridge Condominium Asso. v. Lawrence*, 554 A.2d 1163, 1989 D.C. App. LEXIS 34 (1989).

Statute authorizing condominium to make individual assessment for common expenses benefiting less than all units or caused by conduct of less than all those entitled to occupy elements to the extent condominium docu-

ments expressly so provide did not provide authority for condominium association's board of directors to adopt move-in fee when condominium documents provided only for pro rata allocation of common elements expenses among all unit owners except in cases of owner negligence, misuse, or neglect; the condominium documents did not expressly provide for individual assessments, so the statute did not provide authority for move-in fee. D.C. Code 1981, § 45-1852(b). *Westbridge Condominium Asso. v. Lawrence*, 554 A.2d 1163, 1989 D.C. App. LEXIS 34 (1989).

Condominium association board of directors had authority under association bylaws to assess cost of conservation easement disproportionately among unit owners where one owner was not United States federal income taxpayer and could not reap charitable deduction benefits of easement. D.C. Code 1981, §§ 45-1848(b), 45-1852(b). *Ochs v. L'Enfant Trust*, 504 A.2d 1110, 1986 D.C. App. LEXIS 276 (1986).

§ 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

(A) A lien or encumbrance recorded prior to the recordation of the declaration;

(B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. The immediately preceding institution of an action to enforce the lien. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c)(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due, unless the condominium instruments provide otherwise. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in

full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.

(3) The power of sale may be exercised by the executive board on behalf of the unit owners' association, and the executive board shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

(4) A foreclosure sale shall not be held until 30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.

(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.

(6) The proceeds of a sale shall be applied:

(A) To any unpaid assessment with interest or late charges;

(B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and

(C) The balance to any person legally entitled to the proceeds.

(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 42-1902.09.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 42-1903.12(c).

(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 313, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(gg), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(k), 39 DCR 683.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1902.02, and 42-1904.11.

Prior Codifications. — 1981 Ed., § 45-1853.

1973 Ed., § 5-1253.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(k) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

CASE NOTES

ANALYSIS

Attorney fees.
Authority to foreclose.

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Attorney fees.
Statutory requirement that attorney fees in-

curred in connection with enforcement of lien for unpaid assessments against condominium unit imposed upon condominium association duty to provide information supporting the fee request, and upon trial court the duty to evaluate the request according to the required method in the jurisdiction; thus, a portion of judgment awarding attorney fees calculated in the amount of 33% of the assessments in arrears would be remanded for reconsideration. *Robinson v. Fairfax Village Condominium VIII*, 600 A.2d 94, 1991 D.C. App. LEXIS 331 (1991).

Authority to foreclose.

Even if foreclosure sale of condominium owner's unit after he became delinquent on his condominium payments implicated the Due Process Clause, such was not violated by notice sent to owner by condominium unit owners association and manager of condominium, as association and manager satisfied statutory notice requirements, they made numerous efforts to notify owner about his payment delinquency, and due process did not require actual notice of the foreclosure. *Harris v. Northbrook Condo. II*, 44 A.3d 293, 2012 D.C. App. LEXIS 270 (2012).

Lien for assessments against condominium unit can be enforced by power of sale only if condominium instruments do not provide otherwise. D.C. Code 1981, § 45-1853(c). *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A.2d 495, 1994 D.C. App. LEXIS 70 (1994).

Absent some evidence of acquiescence by individual owner of condominium unit, power of sale mechanism enacted after condominium

documents are recorded and after individual owner has purchased his unit cannot be interpreted to apply retroactively to alter contractual rights between condominium owner and condominium association. D.C. Code 1981, § 45-1801(c). *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 548 A.2d 87, 1988 D.C. App. LEXIS 162 (1988).

Summary judgment.

Material issues of fact existed as to whether condominium association had authority under bylaws to foreclose on liens for unpaid assessments by individual owner by executing statutory power of sale, rather than proceeding by judicial foreclosure, thereby precluding summary judgment in favor of condominium association; statutory provision providing for power of sale foreclosure was not enacted until after condominium documents were recorded and owner had purchased his unit, and documents submitted did not contain any provision which could be interpreted as providing for incorporation of subsequent amendments to Condominium Act into contract between unit owner and association. D.C. Code 1981, § 45-1801(c). *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 548 A.2d 87, 1988 D.C. App. LEXIS 162 (1988).

Genuine issue of material fact existed as to whether condominium association's bylaws required some form of court action before foreclosure sale of unit, precluding summary judgment for association and subsequent purchasers in suit claiming title to unit. *Lonon v. Board of Directors of Fairfax Village Condominium, etc.*, 535 A.2d 1386, 1988 D.C. App. LEXIS 13 (1988).

§ 42-1903.14. Financial records.

The unit owners' association shall keep books with detailed accounts in chronological order of the unit owners' association's income and expenditures. The books and the vouchers accrediting the entries shall be made available for examination by a unit owner or the unit owner's attorney, accountant, or authorized agent during reasonable hours on business days. The books shall be kept in a manner verifiable upon an audit and shall be subjected to an independent financial review at least once annually. The books shall be subject to an independent audit upon the request of unit owners of units to which at least 33⅓% of the votes in the unit owners' association appertain or a lower percentage as may be specified in the condominium instruments.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 314, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(hh), 38 DCR 261.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1854.

1973 Ed., § 5-1254.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.15. Limitation on right of first refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of any of the condominium units, such rights and restraints shall be void unless the condominium instruments make provisions for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, its executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 315, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ii), 38 DCR 261.)

Section references. — This section is referred to in § 42-1904.11.

Prior Codifications. — 1981 Ed., § 45-1855.

1973 Ed., § 5-1255.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.16. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

(a) As used in this section, the term “structural defect” means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) A declarant shall warrant against structural defects in each of the units for 2 years from the date each unit is first conveyed to a bona fide purchaser,

and all of the common elements for 2 years. The 2 years shall begin as to any portion of the common elements whenever the portion has been completed or, if later:

(1) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

(2) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;

(3) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

(4) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

(c) A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition. If the conversion condominium is offered in "as is" condition, the declarant's warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

(d) Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties; and

(2) Is excluded by an expression of disclaimer such as "as is", "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(e)(1) Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with the Mayor in the amount of 10% of the estimated construction or conversion costs, or shall provide any other form of security the Mayor shall approve to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this section. The other security may include a lien in favor of the Mayor against the declarant's equity in any unsold units, including any non-residential units, in which event the unsold units will be valued, for purposes of computing the declarant's equity, at 90% of the current listed sales price of the units, or if not listed, then the current listed sales price of comparable units in the condominium. The bond, letter of credit, or other security shall be reduced at the declarant's request in pro rata segments (based on the residential unit's percentage interest in the residential portion of the condominium) 2 years after the conveyance of each unit; provided, however, that in no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the condominium association to purchasing residential unit owners other than the declarant. For purposes of this subsection, "transfer of control" shall have occurred when 51% or more of the residential executive board is composed of residential unit owners other than the declarant, or successor declarant, or the declarant's selections or nominees. At the end of 5 years from the conveyance of the first residential unit to a purchaser, and provided one year has passed following transfer of control by the declarant, the declarant may sell unsold residential units as resale units, in which event no warranty against structural

defects in the units under this section shall be required and the bond shall be reduced pro rata as to those unsold units. The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed use condominiums or mixed use projects. If residential condominium units are part of a mixed use condominium, the cost of the residential portion of the condominium shall include the residential condominium units' pro rata share of common elements, based on the residential condominium units' percentage interest in the common elements. If a residential condominium is part of a mixed use project, the cost of the residential condominium includes its pro rata share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section.

(f) As used in this section, the term "conveyance" shall mean the transfer of title by written instrument.

(g)(1) The Mayor shall issue proposed rules to implement the provisions of this section within 180 days of October 22, 1999. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) The Mayor shall report to the Council on an annual basis on the use and effect of this section and the number of condominium units traded each year.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 316, as added Mar. 8, 1991, D.C. Law 8-233, § 2(jj), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(l), 39 DCR 683; Oct. 22, 1999, D.C. Law 13-46, § 2, 46 DCR 6598.)

Section references. — This section is referred to in § 42-1903.17.

Prior Codifications. — 1981 Ed., § 45-1856.

Effect of amendments. — D.C. Law 13-46 added subsecs. (f) and (g) and rewrote subsec. (e) which formerly provided:

"(e)(1) Prior to the declarant's first conveyance of a residential unit to a purchaser, the declarant shall post a bond or letter of credit with the Mayor in the amount of 10% of the estimated construction or conversion costs, or shall provide any other form of security the Mayor shall approve to satisfy any costs that arise from the declarant's failure to satisfy the

requirements of this section. The other security may include a lien in favor of the Mayor against the declarant's equity in any unsold units, including any non-residential units, in which event the unsold units will be valued, for purposes of computing the declarant's equity, at 90% of the current listed sales price of the units, or if not listed, then the current listed sales price of comparable units in the condominium. The bond, letter of credit, or other security shall be reduced at the declarant's request in pro rata segments (based on the residential unit's percentage interest in the residential portion of the condominium) 2 years after the conveyance of each unit; provided,

however, that in no event shall the security be reduced below 50% of the original amount of the security until one year after transfer of control of the residential executive board of the condominium association to purchasing residential unit owners other than the declarant. For purposes of this subsection, 'transfer of control' shall have occurred when 51% or more of the residential executive board is composed of residential unit owners other than the declarant, or successor declarant, or the declarant's selections or nominees. At the end of 5 years from the conveyance of the first residential unit to a purchaser, and provided one year has passed following transfer of control by the declarant, the declarant may sell unsold residential units as resale units, in which event no warranty against structural defects in the units under this section shall be required and the bond shall be reduced pro rata as to those unsold units. The bonding requirements pursuant to this subsection and the warranties required under this section are applicable only to residential condominiums or the residential condominium portion of mixed use condominiums or mixed use projects. If residential condominium units are part of a mixed use condominium, the cost of the residential portion of the condominium shall include the residential condominium units' pro rata share of common elements, based on the residential condominium units' percentage interest in the common elements. If a residential condominium is part of a mixed use project, the cost of the residential condominium includes its pro rata share of those portions of the project directly supporting, enclosing or servicing the residential condominium.

"(2) If claims for structural defects under this section are pending at the time the bond or other security posted would otherwise no longer be required, then the bond or other security shall be required to be maintained in the

amount of the claim, until the claims have been finally resolved and the bond or other security has been made available to satisfy the declarant's responsibilities to the unit owners and association under this section. The bylaws and other condominium documents to be prepared by the declarant shall not restrict or hinder the residential executive board's right to assert claims under this section."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Condominium Warranty Bond Release Discretion Clarification Emergency Amendment Act of 2006 (D.C. Act 16-420, July 18, 2006, 53 DCR 6163).

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 13-46. — Law 13-46, the "Condominium Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-151, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 8, 1999, and July 6, 1999, respectively. Signed by the Mayor on July 23, 1999, it was assigned Act No. 13-123 and transmitted to both Houses of Congress for its review. D.C. Law 13-46 became effective on October 22, 1999.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 13-46, the "Condominium Amendment Act of 1999", see Mayor's Order 2002-166, September 27, 2002 (49 DCR 8926).

Editor's notes. — Section 4 of D.C. Law 13-46 provided: "This act shall be applicable to all condominiums registered after January 1, 1999."

§ 42-1903.17. Statute of limitations for warranties.

A judicial proceeding for breach of any warranty that arises under § 42-1903.16 shall be commenced within 5 years after the date the warranty period began.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 317, as added Mar. 8, 1991, D.C. Law 8-233, § 2(kk), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(m), 39 DCR 683.)

Prior Codifications. — 1981 Ed., § 45-1857.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see His-

torical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Histor-

ical and Statutory Notes following § 42-1901.01.

§ 42-1903.18. Master associations — Authorization; powers; rights and responsibilities of unit owners; election of executive board.

(a) If the condominium instruments for a condominium provide that any of the powers described in § 42-1903.08 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or incorporated association that exercises the powers described in § 42-1903.08 or other powers on behalf of 1 or more condominiums or for the benefit of the unit owners of 1 or more condominiums, all provisions of this chapter applicable to unit owners' associations shall apply to the for-profit or nonprofit corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in § 42-1903.04, it may exercise the powers set forth in § 42-1903.08(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums that are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the condominium instruments of any condominium provide that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the powers following delegation.

(d) The rights or responsibilities of a unit owner with respect to the unit owners' association set forth in §§ 42-1903.02, 42-1903.03, 42-1903.04, 42-1903.05, and 42-1903.20 shall apply in the conduct of the affairs of a master association only to any person who elects the board of a master association, whether or not the person is otherwise a unit owner within the meaning of this chapter.

(e) Notwithstanding the provisions of § 42-1903.02(a) with respect to the election of the executive board of a unit owners' association by all unit owners after the period of declarant control ends, and regardless of whether a master association is an association described in § 42-1903.01, the certificate of incorporation or other instrument that creates the master association and the condominium instruments of each condominium, the powers of which are assigned by the condominium instruments or delegated to the master association, may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of the executive board;

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board;

(3) All unit owners of each condominium subject to the master association may elect specified members of the executive board; or

(4) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 318, as added Mar. 8, 1991, D.C. Law 8-233, § 2(ll), 38 DCR 261.)

Section references. — This section is referred to in § 42-1901.02.

Prior Codifications. — 1981 Ed., § 45-1858.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.19. Merger or consolidation of condominiums.

(a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, if 2 or more condominiums merge or consolidate the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums, and the operations or activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association. The single unit owners' association shall hold any power, right, obligation, asset, or liability of all preexisting unit owners' associations.

(b) An agreement of 2 or more condominiums to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate the condominium.

(c)(1) A merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which the reallocations are based, or by stating the percentage of overall allocated interests of the new condominiums which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the condominium instruments of the preexisting condominium.

(2) For purposes of this section, the term "allocated interests" shall mean the individual interest in the common elements, the liability for common expenses, and the votes in the unit owners' association that pertain to each unit.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 319, as added Mar. 8, 1991, D.C. Law 8-233, § 2(mm), 38 DCR 261.)

Section references. — This section is referred to in § 42-1901.02.

Prior Codifications. — 1981 Ed., § 45-1859.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.20. Conveyance or encumbrance of common elements.

(a) A portion of the common elements may be conveyed or subjected to a security interest by the unit owners' association if persons entitled to cast at least 80% of the votes in the unit owners' association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the condominium instruments specify, agree to convey or subject to a security interest. To convey or subject a limited common element to a security interest, all the owners of units to which any limited common element is allocated shall agree. The condominium instruments may specify a smaller percentage if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale shall be an asset of the unit owners' association.

(b) An agreement to convey or subject common elements to a security interest shall be evidenced by the execution and recordation of the agreement, or ratification of the agreement, in the same manner as a deed, and by the requisite number of unit owners. The agreement shall specify a date after which the agreement shall be void unless recorded before that date.

(c) The unit owners' association, on behalf of the unit owners, may contract to convey or subject common elements to a security interest. The contract shall not be enforceable against the unit owners' association until approved pursuant to subsections (a) and (b) of this section. Upon approval, the unit owners' association shall have any power necessary and appropriate to effect the conveyance or encumbrance of the common elements, including the power to execute a deed or other instrument.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements pursuant to this section shall not deprive any unit of the unit's right of access or support.

(e) Unless the condominium instruments otherwise provide, a conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of a preexisting encumbrance.

(Mar. 29, 1977, D.C. Law 1-29, title III, § 320, as added Mar. 8, 1991, D.C. Law 8-233, § 2(nn), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1903.18.

Prior Codifications. — 1981 Ed., § 45-1860.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1903.21. Unit owners' association as trustee.

With respect to a third person that deals with the unit owners' association in the unit owners' association's capacity as a trustee, the existence and proper exercise of trust powers by the unit owners' association, may be assumed without inquiry. A third person shall not be bound to inquire whether the unit owners' association has the power to act as trustee or is properly exercising trust powers. A third person without actual knowledge that the unit owners' association is exceeding or improperly exercising its powers is fully protected

in dealing with the unit owners' association as if the unit owners' association possessed and properly executed the powers the unit owners' association purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the unit owners' association in its capacity as trustee.

(Mar. 29, 1977, D.C. Law 1-89, title III, § 321, as added Mar. 8, 1991, D.C. Law 8-233, § 2(oo), 38 DCR 261.)

Prior Codifications. — 1981 Ed., § 45-1860.1.

legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 8-233. — For

Subchapter IV. Registration and Offering of Condominiums.

§ 42-1904.01. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 42-1904.02, 42-1904.03, 42-1904.04, 42-1904.05, 42-1904.06, 42-1904.07, 42-1904.08, 42-1904.09, and 42-1904.12 do not apply to:

- (1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;
- (2) Dispositions pursuant to court order;
- (3) Dispositions by any government or government agency;
- (4) Solicitation and acquisition by the declarant of nonbinding reservation agreements;
- (5) Gratuitous dispositions; or
- (6) Dispositions by foreclosure or deed in lieu of foreclosure.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 401, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(pp), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1904.11.

Prior Codifications. — 1981 Ed., § 45-1861.
1973 Ed., § 5-1261.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1904.02. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.

(a) Neither declarant nor any person on behalf of declarant may offer or dispose of any interest in a condominium unit located in the District of Columbia, nor dispose in the District of Columbia of any interest in a condominium unit located without the District of Columbia prior to the time

the condominium including such unit is registered in accordance with this chapter.

(b) During any period when registration of a condominium is required by this chapter or until the time that all units in the condominium have been initially disposed of to the bona fide purchasers, a declarant may not dispose of any interest in a condominium unit not previously disposed of unless there is delivered to the purchaser a current public offering statement by the time of the disposition. The disposition shall be expressly and without qualification or condition subject to cancellation by the purchaser before conveyance of the unit, within 15 days after the date of execution of the contract for the disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement shall not be current unless any necessary amendment is incorporated or attached. If the purchaser elects to cancel, he or she may cancel by notice hand-delivered or sent by United States mail, return receipt requested, to the seller. The cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

(c) The public offering statement and sales contract shall contain a clause and its Spanish equivalent in a form prescribed by the Mayor which shall clearly state the purchaser's right to cancel.

(d) A declarant shall be liable under this chapter for any false or misleading statement in a public offering statement or for any omission of a material fact with respect to the portion of the public offering statement that he or she prepared or caused to be prepared. If a declarant did not prepare or cause to be prepared any part of a public offering statement that he or she delivers, the declarant shall not be liable for any false or misleading statement or any omission of a material fact unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 402, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(qq), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1904.01.

Prior Codifications. — 1981 Ed., § 45-1862.

1973 Ed., § 5-1262.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

ical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

ANALYSIS

Exemptions.
In general.

Exemptions.

Developer, which intended to convert a vacant row house into a condominium, was not procedurally barred from filing for a not-a-housing-accommodation exemption (NHA ex-

emption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development had already issued a notice of filing on developer's condominium registration application, as developer's delayed request for the NHA exemption occurred because developer at first was not

aware it qualified for the exemption, developer filed the request shortly after it filed its registration application, the issuance of the notice of filing neither commenced nor ended the conversion process, and CASD was not prejudiced by developer's delay. 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

Letter from the Administrator of the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development, outlining a procedural bar against developer from obtaining a not-a-housing-accommodation exemption (NHA exemption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the CASD had already issued a notice of filing on developer's condominium registration application, was not entitled to a heightened level of deference when developer judicially challenged the purported procedural bar, as the Administrator's letter was an informal ruling, rather than a rule or regulation adopted through a formal notice-and-comment rulemaking proceeding or contested case in conformity with the District of Columbia Administrative Procedure Act (DCAPA). 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

Developer, which intended to convert a vacant row house into a condominium, was not judicially estopped from filing for a not-a-housing-accommodation exemption (NHA exemption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development had already approved developer's application for the vacancy exemption from the tenant approval provision of the Conversion Act; in both its vacancy exemption application and its conversion fee application developer characterized the building as an uninhabitable shell, and developer

did derive an unfair advantage or impose an unfair detriment on CASD by seeking the additional conversion fee exemption. 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

In general.

Purchaser failed to state a claim for violation of the District of Columbia Condominium Act (DCCA) against general contractor that converted single-family dwelling into a multi-unit condominium building, where no allegations in the complaint permitted an inference that general contractor qualified as a "declarant" as that term was defined in the DCCA, given that it did not offer the condominium for sale or apply for registration of the condominium. Parr v. Mashaallah Ebrahimi, 774 F.Supp.2d 234, 2011 U.S. Dist. LEXIS 34492 (2011).

Purchaser stated a claim for violation of the District of Columbia Condominium Act (DCCA) against vendors, although section of her complaint alleging claims under the DCCA merely recited the elements of a cause of action under the statute, where, in the complaint as a whole, purchaser alleged that vendors failed to disclose in the public offering statement that the condominium was not originally part of the building in which it was located, and that at least one structural element of the condominium did not conform to applicable building regulations. Parr v. Mashaallah Ebrahimi, 774 F.Supp.2d 234, 2011 U.S. Dist. LEXIS 34492 (2011).

In order to recover for alleged fraudulent misrepresentations regarding failure of condominium public offering statement to state that right of purchaser of condominium unit to resell for nonresidential use might be limited, unit owner's proof of damages was crucial, but nature of required proof of damages depended upon conduct of unit owner upon discovery of fraud. Dresser v. Sunderland Apartments Tenants Assn., 465 A.2d 835, 1983 D.C. App. LEXIS 456 (1983).

§ 42-1904.03. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.

(a) The application for registration of the condominium shall be filed as prescribed by the Mayor's rules and shall contain the following documents and information:

(1) An irrevocable appointment of an agent in the District of Columbia, and in the absence of such an agent, the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or applicant's personal representative;

(2) The states or jurisdictions in which an application for registration or

similar document pertaining to the condominium has been filed, and any adverse order, judgment, or decree by any regulatory authority or by any court entered against declarant or any other person referred to in paragraph (3) of this subsection in connection with:

(A) Any registration, offer of sale of any condominium or condominium units;

(B) Any violation of any condominium statute or any lack of compliance with a condominium instrument; and

(C) Any breach of contract, fraud or misrepresentation perpetrated against any unit owner, unit owner association or unit purchaser;

(3) The name, address, and principal occupation for the past 5 years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of such person's interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

(4) A statement, in a form acceptable to the Mayor, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the Mayor;

(5) Copies of any management agreements, employment contracts or other contracts or agreements affecting the use or maintenance of, or access to, all or a part of the condominium;

(6) Plats and plans of the condominium that comply with the provisions of § 42-1902.14 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands; except that the Mayor may by regulation or order waive or modify this requirement or the requirements of § 42-1902.14 for plats and plans of a condominium located outside the District of Columbia;

(7) The proposed public offering statement; and

(8) Any other information, including any current financial statement, which the Mayor by his regulations requires for the protection of purchasers.

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

(c) The declarant shall maintain a copy of the application for registration at the declarant's principal office at the condominium. The application for registration shall be made available for public inspection upon request at reasonable times; provided, however, that the Mayor may grant confidential status to any information required pursuant to § 42-1904.04(a)(11). The declarant shall promptly report any material changes in the information contained in an application for registration and amend the application accordingly.

(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate

to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter, except that the fee shall not be less than \$ 100. Monies collected pursuant to this subsection shall be deposited in the Department of Housing and Community Development Unified Fund, established pursuant to § 42-2857.01.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 403, 23 DCR 9532b; Apr. 9, 1997, D.C. Law 11-255, § 49(b), 44 DCR 1271; Sept. 24, 2010, D.C. Law 18-223, § 2102, 57 DCR 6242.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1904.01, 42-1904.12, and 42-3402.11.

Prior Codifications. — 1981 Ed., § 45-1863.

1973 Ed., § 5-1263.

Effect of amendments. — D.C. Law 18-223 rewrote subsec. (d), which had read as follows: “(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2102 of

Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 42-1901.02.

Short title. — Short title: Section 2101 of D.C. Law 18-223 provided that subtitle J of title II of the act may be cited as the “Housing Regulatory Administration Fees Amendment Act of 2010”.

§ 42-1904.04. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include:

(1) The name and principal address of the declarant and the condominium;

(2) The applicant’s name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of 10% or more of the beneficial interest in the stock of applicant if applicant is a corporation;

(3) To the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of

the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;

(4) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

(5) A copy of the condominium instruments, with a brief narrative statement describing each and including:

(A) Information on declarant control;

(B) A projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit);

(C) Provisions for enforcement of liens for assessments;

(D) A statement of the amount, or a statement that there is no amount, included in the projected budget as a reserve for repairs and replacement;

(E) The estimated amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fees;

(F) A description of any restraints on alienation; and

(G) A description of any service not reflected in the proposed budget that the declarant shall provide or expenses that he or she shall pay, and that he or she expects may become, at any subsequent time, a common expense of the unit owners' association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(6) Copies of the deed that shall be delivered to a purchaser to evidence his or her interest in the unit and of the contract of sale that a purchaser shall be required to sign;

(7) A copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

(8) A general statement of:

(A) The status of construction;

(B) The project's compliance with zoning, site plan and building permit regulations;

(C) Source of financing available and the estimated amount necessary to complete all improvements shown on the plats and plans as "not yet completed" or "not yet begun" which declarant is obligated to complete; and

(D) The projected date of completion of construction or renovation of the major amenities of the condominium;

(9) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

(10) The significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;

(11) The provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by § 42-1903.07(b) [(b) repealed];

(12) A statement that the contract purchaser of a condominium unit may, prior to conveyance, cancel the purchase transaction within 15 days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;

(13) A statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages;

(14) Additional information required by the Mayor to assure full and fair disclosure to prospective purchasers; and

(15) Repealed.

(a-1) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by subsection (a) of this section:

(1) The total number of units in which time-share estates may be created;

(2) The total number of time-share estates that may be created in the condominium;

(3) The projected common expense assessment for each time-share estate and whether the assessment may vary seasonally;

(4) A statement that shall include:

(A) Any service that the declarant shall provide or any expense that the declarant shall pay, if the service or expense is not reflected in the budget and the declarant expects that the expense or service may later become a common expense of the unit owners' association; and

(B) The projected common expense assessment attributable to any expense or service listed pursuant to subparagraph (A) of this paragraph for each time-share estate;

(5) Repealed;

(6) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against the unit;

(7) The extent to which a suit for partition may be maintained against a unit owned in time-share estates; and

(8) The extent to which a time-share estate may become subject to a tax or other lien that arises out of claims against other time-share owners of the same unit.

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the Mayor approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement if

such emphasis is intended to mislead the prospective purchaser or to otherwise conceal material facts, except that there may be a cover sheet for such public offering statement using such design, pictures and words as the Mayor may deem reasonable. The form, content, and layout of the public offering statement shall be subject to approval by the Mayor.

(c) The declarant shall file with the Mayor a statement of any material change in the information contained in the public offering statement. Such statement shall be filed within 15 days after the date on which the declarant knows or should have known about the change. The Mayor may require the declarant to amend the public offering statement if necessary to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Such amendments must be mailed by United States registered mail, return receipt requested. Such receipt shall be kept on file for review.

(d) The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of paragraph (9) of subsection (a) of this section is for offers of units currently registered as securities with the Securities and Exchange Commission.

(e) In the case of a condominium situated wholly outside the District of Columbia, an application for registration or a proposed public offering statement filed with the Mayor, which has been approved by an agency in the state where the condominium is located and substantially complies with the requirements of this chapter, may not be rejected by the Mayor on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by rules and regulations issued by the Mayor pursuant to this chapter. The Mayor may require additional documents or information in a particular case to assure adequate and accurate disclosure to prospective purchasers.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 405, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(rr), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(n), 39 DCR 683; Mar. 24, 1998, D.C. Law 12-81, § 54, 45 DCR 745.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1903.12, 42-1904.01, 42-1904.03, and 42-1904.08.

Prior Codifications. — 1981 Ed., § 45-1864.

1973 Ed., § 5-1264.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(l) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see His-

torical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CASE NOTES

In general.

In order to recover for alleged fraudulent misrepresentations regarding failure of condominium public offering statement to state that right of purchaser of condominium unit to resell for nonresidential use might be limited, unit

owner's proof of damages was crucial, but nature of required proof of damages depended upon conduct of unit owner upon discovery of fraud. *Dresser v. Sunderland Apartments Tenants Asso.*, 465 A.2d 835, 1983 D.C. App. LEXIS 456 (1983).

§ 42-1904.05. Application for registration — Investigation by Mayor upon receipt.

Upon receipt of an application for registration in proper form, the Mayor may forthwith initiate an investigation to determine:

(1) That there is reasonable assurance that the declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

(2) That there is reasonable assurance that all proposed improvements will be completed as represented;

(3) That the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Mayor in its rules and afford full and fair disclosures;

(4) Whether the declarant has, or if a corporation its officers and principals have, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the United States or any foreign country within the past 10 years, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(5) The public offering statement requirements of this chapter have been satisfied.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 405, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1904.01, and 42-1904.06.

Prior Codifications. — 1981 Ed., § 45-1865.

1973 Ed., § 5-1265.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.06. Application for registration — Notice of filing; registration or rejection; notice of need for rejection; hearing.

(a) Upon receipt of the application for registration in proper form, the Mayor shall, within 5 business days, issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the Mayor shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the Mayor affirmatively determines, upon inquiry and examination,

that the requirements of § 42-1904.05 have been met, he shall enter an order registering the condominium and may require any additions, deletions, or modifications in and to the public offering statement in order to assure full and fair disclosure.

(c) If the Mayor determines upon inquiry and examination, that any of the requirements of § 42-1904.05 have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days or such longer period as he may prescribe. If the requirements are not met within the time allowed the Mayor shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after the lapse of the aforesaid period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing to contest the particulars specified in the Mayor's notice. Such order of rejection shall not take effect during the pendency of a hearing, if requested.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 406, 23 DCR 9532b.)

Cross references. — Rental housing conversion and sale, applicability to prior housing accommodations conversions, see § 42-3402.11.

Rental housing conversion and sale, condominium conversion as issuance of notice of filing pursuant to this section, see § 42-3401.03.

Section references. — This section is referred to in §§ 42-1901.01, 42-1903.02, 42-

1904.01, 42-1904.16, 42-3401.03, and 42-3402.11.

Prior Codifications. — 1981 Ed., § 45-1866.

1973 Ed., § 5-1266.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.07. Registration; annual updating report by declarant; termination.

The declarant shall, during any period of control of the condominium by the declarant pursuant to § 42-1903.02 file a report in the form prescribed by the rules of the Mayor within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration. In the event that the annual report reveals that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the Mayor shall issue an order terminating the registration of the condominium.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 407, 23 DCR 9532b.)

Section references. — This section is referred to in §§ 42-1901.01 and 42-1904.01.

Prior Codifications. — 1981 Ed., § 45-1867.

1973 Ed., § 5-1267.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.08. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.

(a) Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of § 42-1904.04:

(1) Repealed;

(2)(A) A statement by the declarant based upon a report of a qualified architect or engineer as to the present condition of all structural components and major utility installations in the condominium. The statement shall include:

(i) The approximate dates of construction, installation, and major repairs of structural components and major utility installations and a general description of each installed system as particularly suitable or unsuitable for use in a conversion condominium;

(ii) An evaluation of the adequacy of each system to perform its intended function both before and after completion of the condominium conversion; and

(iii) The estimated life of the system components, and the estimated cost (in current dollars) of replacing each component that has a rated life that is evaluated to be less than the rated life of the entire structure.

(B) The architect's or engineer's report upon which the statement required by this subsection is based shall be filed with the Mayor as a part of the application for registration.

(b) In the case of a conversion condominium:

(1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease;

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as

favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

(c) Each declarant of a conversion condominium shall assure that the budget established for the unit owners' association and upon which common expense assessments are made shall include an adequate provision for reasonable reserves to cover future maintenance, repair, or replacement costs associated with the common elements.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 408, 23 DCR 9532b; Sept. 10, 1980, D.C. Law 3-86, § 207, 27 DCR 2975; Mar. 8, 1991, D.C. Law 8-233, § 2(tt), 38 DCR 261.)

Cross references. — Cooperative conversion, see § 42-3402.06.

Rental housing conversion and sale, applicability to prior housing accommodations conversions, see § 42-3402.11.

Section references. — This section is referred to in §§ 42-1901.01, and 42-190

Prior Codifications. — 1981 Ed., § 45-1868.

1973 Ed., § 5-1268.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 3-86. — Law

3-86, the "Rental Housing Conversion and Sale Act of 1980," was introduced in Council and assigned Bill No. 3-222, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

CASE NOTES

Construction and application.

Tenant was not entitled to possession of rented premises on effective date of statute prohibiting eviction of disabled tenants during apartment-to-condominium conversion, and thus statute did not apply to prevent tenant's eviction after her refusal during conversion to either purchase or vacate premises, even though tenant had not been evicted at time statute went into effect; at time statute went

into effect, tenant's right to occupy the premises had ended, due to expiration of statutory 120-day period to vacate after conversion, and landlord had chosen to treat her as an unlawful holdover tenant by filing an eviction action. *Redman v. Potomac Place Assocs., LLC*, 972 A.2d 316, 2009 D.C. App. LEXIS 166 (2009), writ of certiorari denied by 558 U.S. 1121, 130 S. Ct. 1071, 175 L. Ed. 2d 900, 2010 U.S. LEXIS 237, 78 U.S.L.W. 3392 (2010).

§ 42-1904.09. Escrow of deposits; to bear interest; not subject to attachment.

Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until either delivered at settlement or returned to the prospective purchaser. Such escrow funds shall be deposited in a separate account for each condominium in a financial institution the accounts of which are insured by a federal or state agency. These deposits shall bear interest at the passbook rate then prevailing in the District of Columbia beginning with the first business day after the date deposited with declarant or declarant's agent. Earned interest shall be credited to the prospective purchaser's deposit. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 409, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1904.01.

Prior Codifications. — 1981 Ed., § 45-1869.

1973 Ed., § 5-1269.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.10. Copies of declaration and bylaws to be furnished to purchaser by declarant.

Unless previously furnished, an exact copy of the recorded declaration and bylaws shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in §§ 42-1902.01 and 42-1902.05.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 410, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1870.

1973 Ed., § 5-1270.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.11. Resale by unit owner; seller to obtain appropriate statements from association and furnish to purchaser; scope of provisions.

(a) In the event of a resale of a condominium unit by a unit owner other than

the declarant, the unit owner shall obtain from the unit owners' association and furnish to the purchaser, on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, a copy of the condominium instruments and a certificate setting forth the following:

- (1) Appropriate statements pursuant to § 42-1903.13(h) and, if applicable, § 42-1903.15, which need not to be in recordable form;
- (2) A statement of any capital expenditures anticipated by the unit owners' association within the current or succeeding 2 fiscal years;
- (3) A statement of the status and amount of any reserves for capital expenditures, contingencies, and improvements, and any portion of such reserves earmarked for any specified project by the executive board;
- (4) A copy of the statement of financial condition for the unit owners' association for the then most recent fiscal year for which such statement is available and the current operating budget, if any;
- (5) A statement of the status of any pending suits or any judgments to which the unit owners' association is a party;
- (6) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;
- (7) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;
- (8) A statement of the remaining term of any leasehold estate affecting the condominium or the condominium unit and the provisions governing any extension or renewal thereof; and
- (9) The date of issuance of the certificate.

(a-1)(1) If the condominium instruments and certificate prescribed pursuant to subsection (a) of this section are not furnished to the purchaser on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, the purchaser shall have the right to cancel the contract by giving notice in writing to the seller prior to receipt of the condominium instruments and certificate, but not after conveyance under the contract.

(2) Except as provided pursuant to paragraph (5) of this subsection, the purchaser shall have the right for a period of 3-business days following the purchaser's receipt of the condominium instruments and certificate prescribed pursuant to subsection (a) of this section, whether or not such receipt occurs within the time period described in subsection (a) of this section, to cancel the contract by giving notice in writing and returning the condominium instruments and certificate to the seller, provided that the purchaser may not so cancel the contract after conveyance under the contract.

(3) If the purchaser cancels the contract pursuant to paragraph (1) or (2) of this subsection, the purchaser shall receive back any earnest money or other deposit without delay or deduction.

(4) From and after the earlier of (i) the expiration of the 3-business-day period for review prescribed pursuant to paragraph (2) of this subsection, or an extension of the 3-business-day period agreed to by the parties in a signed

writing, or (ii) conveyance under the contract, if the purchaser has not exercised the right to cancel, the contract shall not be cancellable by the purchaser under this subsection.

(5) If the condominium instruments and certificate are furnished to the purchaser on or prior to execution of the contract of sale by the purchaser, the 3 business-day period for review prescribed pursuant to paragraph (2) of this subsection shall commence when the contract is executed by the purchaser.

(b) The principal officer of the unit owners' association or such other officer or officers as the condominium instruments may specify, shall furnish the certificate prescribed by subsection (a) of this section upon the written request of any unit owner or purchaser within 10 days of the receipt of such request.

(c) Subject to the provisions of § 42-1904.01, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of Chapter 20 of this title.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 411, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(uu), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(o), 39 DCR 683.)

Cross references. — Application of this chapter, prior law superseded, see § 42-1901.01.

Section references. — This section is referred to in § 42-1903.08.

Prior Codifications. — 1981 Ed., § 45-1871.

1973 Ed., § 5-1271.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(m) of Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991 (D.C. Law 9-38, August 17, 1991, law notification 38 DCR 5805).

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

Legislative history of Law 9-82. — For legislative history of D.C. Law 9-82, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.12. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.). The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial such regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

(b) The Mayor by regulation, rule or order, after reasonable notice and

hearing may require the filing of advertising material relating to condominiums prior to the distribution of such material.

(c) The Mayor may by regulation, rule or order approve the filing and use of an abbreviated public offering statement if the agency determines that the public interest and the interests of purchasers would best be served thereby. The Mayor shall determine whether or not such abbreviated disclosure will be permitted based upon consideration of the following factors among others:

(1) The total number of units being offered is small, which shall mean generally less than 10;

(2) Adequate disclosure of relevant information will otherwise be readily available to prospective purchasers;

(3) The class of purchasers will be comprised substantially of persons having the ability to protect their own interests (such as the present tenants); and

(4) In the case of a conversion condominium, no substantial renovation or remodeling of the units will be done.

(d) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation or order hereunder, the Mayor, with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(e) The Mayor may intervene in any suit involving the rights and liabilities of declarant with respect to the condominium being registered and any transactions related thereto. The Mayor may require the declarant to notify the Mayor of any suit by or against the declarant involving a condominium established or sold by the declarant.

(f) The Mayor may:

(1) Accept registrations filed in other jurisdictions or with the federal government;

(2) Contract with similar agencies in this or other jurisdictions to perform investigative functions; and

(3) Accept grants-in-aid from any governmental source.

(g) The Mayor shall notify the Rental Accommodations Commission whenever an application is made to register a conversion condominium and at such time as any application to register a conversion condominium is approved.

(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with § 42-1904.03, the agency shall send the lawful process by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in the application or any annual report.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 412, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(vv), 38 DCR 261.)

Section references. — This section is referred to in §§ 42-1901.01, 42-1904.01, and 42-1904.17.

Prior Codifications. — 1981 Ed., § 45-1872.

1973 Ed., § 5-1272.

Legislative history of Law 1-89. — For

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 8-233. — For legislative history of D.C. Law 8-233, see Historical and Statutory Notes following § 42-1901.07.

§ 42-1904.13. Investigations and proceedings; powers of Mayor; enforcement through courts.

(a) The Mayor may make necessary public or private investigations in accordance with law within or outside of the District of Columbia to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, and upon the Mayor's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 413, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1873.

1973 Ed., § 5-1273.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.14. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.

(a) If the Mayor determines after notice and hearing that a person has: (1) violated any provision of this chapter; (2) directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional, or sales method to offer or dispose of a unit; (3) made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency; (4) disposed of any units which have not been registered with the agency; or (5) violated any lawful order or rule of the agency, the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take

such affirmative action as in his judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order to the person affected. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 414, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1874.
1973 Ed., § 5-1274.

Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.15. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.

(a)(1) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

(A) Failed to comply with the terms of a cease and desist order;

(B) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(C) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(D) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(E) Made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the Mayor finds after notice and hearing that the declarant has been guilty of a violation for which revocation could be ordered, the agency may issue a cease and desist order instead.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 415, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.

Prior Codifications. — 1981 Ed., § 45-1875.

1973 Ed., § 5-1275. ical and Statutory Notes following § 42-1901.01.
Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

§ 42-1904.16. Judicial review of mayoral actions.

Proceedings for judicial review of mayoral actions shall be subject to and be in accordance with the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) applicable to “rule-making”; provided, however, that review of mayoral actions pursuant to § 42-1904.06 shall be subject to provisions applicable to “contested cases.”

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 416, 23 DCR 9532b.)

Section references. — This section is referred to in § 42-1901.01.
Prior Codifications. — 1981 Ed., § 45-1876.
 1973 Ed., § 5-1276. **Legislative history of Law 1-89.** — For legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

§ 42-1904.17. Penalties; prosecution by Corporation Counsel.

(a) Any person who wilfully violates any provision of this chapter or any rule adopted under or order issued pursuant to § 42-1904.12 or any person who wilfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or such person may be imprisoned for not more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel or his assistants.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 417, 23 DCR 9532b; Oct. 5, 1985, D.C. Law 6-42, § 420, 32 DCR 4450.)

Section references. — This section is referred to in § 42-1901.01.
Prior Codifications. — 1981 Ed., § 45-1877.
 1973 Ed., § 5-1277. ical and Statutory Notes following § 42-1901.01.
Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 42-3405.06.
Legislative history of Law 1-89. — For legislative history of D.C. Law 1-89, see Histor-

§ 42-1904.18. Severability.

If any provision of this chapter, or any paragraph, section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid,

the validity of the remainder of this chapter, and of the application of any such provision, paragraph, section, sentence, clause, phrase or word in any circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable.

(Mar. 29, 1977, D.C. Law 1-89, title IV, § 418, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 45-1878.
1973 Ed., § 5-1278.

legislative history of D.C. Law 1-89, see Historical and Statutory Notes following § 42-1901.01.

Legislative history of Law 1-89. — For

HORIZONTAL PROPERTY REGIMES

CHAPTER 20. HORIZONTAL PROPERTY REGIMES.

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- 42-2027. Subchapter supplements existing code provisions; exception where conflict arises.
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- 42-2030. Right to individual water meters; common water service authorized; billing and collection.
- 42-2031. Authority vested in Board of Commissioners unaffected; delegation of functions.

Subchapter II. Council Authority

- 42-2051. Council authorized to prohibit conversions to condominiums.

Subchapter I. General.

§ 42-2001. Short title.

This subchapter, including its table of contents, may be cited as the "Horizontal Property Act of the District of Columbia."

(Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 1.)

Prior Codifications. — 1981 Ed., § 45-1701.

1973 Ed., § 5-901.

Editor's notes. — Supersedure of chapter:

The provisions of this chapter have been superseded by the provisions of Chapter 19 of this title. See § 42-1901.01(c).

§ 42-2002. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(1) "Unit" or "condominium unit" means an enclosed space, consisting of 1 or more rooms, occupying all or part of 1 or more floors in buildings of 1 or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, and shall include such accessory units as may be appended thereto, such as garage space, storage space, balcony, terrace or patio; provided, that said unit has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(2) "Condominium" means the ownership of single units in a multiunit project with common elements.

(3) "Condominium project" or "project" means a real estate condominium project; a plan or project condominium project; a plan or project whereby 5 or more apartments, rooms, office spaces, buildings, or other units, which may be either contiguous or detached, in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(4) "Co-owner" means a person, persons, corporation, trust, or other legal entity, or any combination thereof, that owns a condominium unit within the building.

(5) "Council of co-owners" means the co-owners as defined in paragraph (4) of this section, acting as a group in accordance with the provisions of this subchapter and the bylaws and declaration established thereunder; and a majority, as defined in paragraph (8) of this section, shall, except as otherwise provided in this subchapter, constitute a quorum for the adoption of decisions.

(6) "General common elements" except as otherwise provided in the plat of condominium subdivision, means and includes:

(A) The land on which the building stands in fee simple or leased provided that the leasehold interest of each unit is separable from the leasehold interests of the other units;

(B) The foundations, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, stairways, and entrance and exit or communication ways;

(C) The basements, flat roofs, yards, and gardens except as otherwise provided or stipulated;

(D) The premises for lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(E) The compartments or installations of central services such as power, light, gas, cold and hot water, heating, central air conditioning or central refrigeration, swimming pools, reservoirs, water tanks and pumps, and the like;

(F) The elevators, garbage and trash incinerators and, in general, all devices or installations existing for common use; and

(G) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety.

(7) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of condominium units, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like.

(8) "Majority of co-owners," "two-thirds of the co-owners," and "three-fourths of the co-owners" mean, respectively, 51%, 66 $\frac{2}{3}$ %, and 75% or more of the votes of the co-owners computed in accordance with their percentage interests as established under § 42-2006.

(9) "Plat of condominium subdivision" means the plat of the surveyor of the District of Columbia establishing the condominium units, accessory units, general common elements, and limited common elements.

(10) "Person" means a natural individual, corporation, trustee, or other legal entity or any combination thereof.

(11) "Developer" means a person that undertakes to develop a real estate condominium project.

(12) "Property" means and includes the lands whether leasehold, if separable as defined in subparagraph (A) of paragraph (6) of this section, or in fee simple, the building, all improvements and structures thereon, and all easements, rights, and appurtenances thereunto belonging.

(13) "To record" means to record in accordance with the provisions of § 42-401.

(14) "Common expenses" means and includes;

(A) All sums lawfully assessed against the unit owners by the council of co-owners;

(B) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities, including repair and replacement funds as may be established;

(C) Expenses agreed upon as common expenses by the council of co-owners; and

(D) Expenses declared common expenses by the provisions of this chapter or by the bylaws.

(15) "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after deduction of the common expenses.

(16) All words used herein include the masculine, feminine, and neuter genders and include the singular or plural numbers, as the case may be.

(Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 2; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(a), (b); May 22, 1975, D.C. Law 1-3, § 2(1), 21 DCR 3944; Apr. 9, 1997, D.C. Law 11-255, § 48(a), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 45-1702.

1973 Ed., § 5-902.

Legislative history of Law 1-3. — Law 1-3, the “Horizontal Property Act Amendment Act of 1975,” was introduced in Council and assigned Bill No. 1-12, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on February 25, 1975, and March 11, 1975, respectively. Signed by the Mayor on March 27, 1975, it was assigned Act No. 1-5 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-255. — Law

11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor’s notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

CASE NOTES

In general.

Suit by board of directors of condominium association protesting construction of subway was related to “common elements or more than one unit” within meaning of provision of Horizontal Property Act authorizing board to maintain actions relating to the common elements or more than one unit; matters encompassed by settlement agreement, including regulation of

construction and vibration from trains, were rationally necessary for condominium’s existence, upkeep and safety, which matters fall within statutory definition of “general common elements.” D.C. Code §§ 5-902(f), (f)(7), 5-924(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

§ 42-2003. Establishment by subdivision.

Whenever the owners or the co-owners of any square or lot shall subdivide the same into a condominium project in conformity with § 42-2009 with a plat of condominium subdivision there shall be established a horizontal property regime.

(Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 3.)

Cross references. — Real property assessment and tax, condominium defined, see §§ 47-803, 47-1002.

Real property assessment and tax, horizontal property regime defined, see § 47-803.

Section references. — This section is referred to in § 47-813.

Prior Codifications. — 1981 Ed., § 45-1703.

1973 Ed., § 5-903.

Editor’s notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2004. Transfer of individual units; incidents of real property; recordation.

Once the property is subdivided into the horizontal property regime, a condominium unit in the project may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and

entirely independent of the other condominium units in the project of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable.

(Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 4; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Prior Codifications. — 1981 Ed., § 45-1704.

1973 Ed., § 5-904.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2005. Joint tenancies, tenancies in common, tenancies by the entirety.

Any condominium unit may be held and owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia.

(Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 5.)

Prior Codifications. — 1981 Ed., § 45-1705.

1973 Ed., § 5-905.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2006. Units held in fee; common elements held in undivided shares; recordation of declaration of ownership percentages; market values of units and shares not fixed; voting on basis; unit deeds.

(a) A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

(b) Said percentage interest shall not be separated from the unit to which it appertains.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the project, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall,

nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(d) The said basic value of said undivided common interest shall be fixed for the purposes of this subchapter and shall not fix the market value of the individual condominium units and undivided share interests and shall not prevent each co-owner from fixing a different circumstantial value to his condominium unit and undivided share interest in the common elements, in all types of acts and contracts.

(e) In addition to the foregoing provisions, the declaration may contain other provisions and attachments relating to the condominium and to the units which are not inconsistent with this subchapter.

(f) Voting at all meetings of the co-owners shall be on a percentage basis, and the percentage of the vote to which each co-owner is entitled shall be the individual percentage assigned to his unit in the declaration.

(g) Individual condominium unit deeds may make reference to this subchapter, the condominium subdivision and land subdivision plats referred to in § 42-2010 hereof, the declaration provided for in this section, the bylaws of the council of co-owners, and the deeds may include any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this subchapter.

(Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 6; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Section references. — This section is referred to in §§ 42-2002, 42-2011, 42-2013, 42-2014, 42-2016, 42-2023, 42-2024, 42-2025 and 42-2030.

Prior Codifications. — 1981 Ed., § 45-1706.
1973 Ed., § 5-906.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2007. Indivisibility of common elements; limitation upon partition; exception thereto.

(a) The common elements, both general and limited, shall remain undivided. No unit owner, or any other person, shall bring any action for partition or division of the co-ownership permitted under § 93, and related provisions, of the Act of March 3, 1901 (31 Stat. 1203), as amended by the Act of June 30, 1902 (32 Stat. 523, ch. 1329), against any other owner or owners of any interest or interests in the same horizontal property regime so as to terminate the regime.

(b) Nothing contained in this section shall be construed as a limitation on partition by the owners of 1 or more units in a regime as to the individual ownership of such unit or units without terminating the regime or as to the ownership of property outside the regime; provided, that upon partition of any such individual unit the same shall be sold as an entity and shall not be partitioned in kind.

(Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 7.)

Cross references. — Partition actions, see § 16-2901.

1973 Ed., § 5-907.

Section references. — This section is referred to in § 42-2011.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

Prior Codifications. — 1981 Ed., § 45-1707.

§ 42-2008. Use of elements held in common; right to enter units for certain repairs.

(a) Each co-owner may use the elements held in common in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(b) The manager, board of directors or of administration, as the case may be, shall have an irrevocable right and an easement to enter units to make repairs to common elements or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit.

(Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 8.)

Prior Codifications. — 1981 Ed., § 45-1708.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2009. Plat of condominium subdivision — Contents thereof; certification and recordation.

(a) Whenever the owner or the co-owners of any square or lot duly subdivided in conformity with § 1-1320 or other applicable laws of the District of Columbia shall deem it necessary to subdivide the same into a condominium project of convenient condominium units for sale and occupancy and means of access for their accommodation, he may cause a plat or plats to be made by the surveyor of the District of Columbia, on which said plats, together, shall be expressed:

(1) The ground dimensions as set forth under such § 1-1320 and the exterior lengths of all lines of the building;

(2) For each floor or floors, in the instance of condominium units consisting of more than 1 floor, of the condominium subdivision, the number or letter, dimensions, and lengths of finished interior surfaces of unit dividing walls of the individual condominium units; the elevations (or average elevation, in case of slight variance) from a fixed known point, of finished floors and of finished ceilings of such condominium units situate upon the same floor, and further expressing the area, the relationship of each unit to the other upon the same floor and their relationship to the common elements upon said floor; provided, that when a unit is situated on more than 1 floor, access shall be provided within the unit between the portion of the unit on any 1 floor and the portion of the unit on any other floor in addition to any outside access which might be provided to any portion of the unit;

(3) The dimensions and lengths of the interior finished surface of walls,

elevations, from said same fixed known point, of the finished floors and of the finished ceilings of the general common elements of the building, and, in proper case, of the limited common elements restricted to a given number of condominium units, expressing which are those units; and

(4) Any other data necessary for the identification of the individual condominium units and the general and limited common elements.

(b) And said owners or co-owners may certify such condominium subdivisions under their hands and seals in the presence of 2 credible witnesses, upon the same plat or on a paper or a parchment attached thereto. And the same shall thereupon be put up, labeled, indexed, and preserved for record and deposit with the office of the surveyor for the District of Columbia in like manner as land subdivisions have been heretofore recorded or in such other books as the said surveyor may prescribe.

(Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 9; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(c); Apr. 9, 1997, D.C. Law 11-255, § 48(b), 44 DCR 1271.)

Section references. — This section is referred to in § 42-2003.

Prior Codifications. — 1981 Ed., § 45-1709.

1973 Ed., § 5-909.

Legislative history of Law 11-255. — For

legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2010. Plat of condominium subdivision — Reference thereto for description; conveyance of unit includes share in common elements.

When a plat of a condominium project and subdivision shall be so certified, examined, and recorded, the purchaser of any condominium unit thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Mayor of the District of Columbia and the original proprietors and in the same manner as has been heretofore the practice for land subdivisions; provided, that said purchaser or other person interested therein shall also make reference to the plat of land subdivision appearing prior to the establishment of the condominium subdivision thereupon. Any such conveyance of an individual condominium unit shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, and of any accessory units, if any, appertaining to said condominium unit without specifically or particularly referring to the same.

(Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 10.)

Section references. — This section is referred to in §§ 42-2006 and 42-2011.

Prior Codifications. — 1981 Ed., § 45-1710.

1973 Ed., § 5-910.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-2011. Termination and waiver of regime; certification upon plat; judicial termination; ownership after termination; condominium restrictions not applicable after termination or partition.

(a) All the co-owners or the sole owner of a project constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of 2 credible witnesses, upon the same plat or upon a paper or parchment attached thereto; provided, that the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment; provided further, that should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver; provided further, that if within 90 days of the date of such damage or destruction: (1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in §§ 42-2021 and 42-2022 or; (2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of § 42-2021 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the Superior Court of the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the bylaws in conformity with § 42-2014(a)(7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(b) In the event a horizontal property regime is terminated or waived, the property shall be deemed to be owned in common by the co-owners, and the undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements in the property as set forth in the declaration under § 42-2006.

(c) Upon such termination and waiver the provisions of § 42-2010 shall no longer be applicable and reference to the principal project thereupon shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by § 42-2007 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia.

(Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 11; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(d); July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(20); May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Prior Codifications. — 1981 Ed., § 45-1711.

1973 Ed., § 5-911.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2012. Merger no bar to reconstitution.

The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this subchapter.

(Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 12.)

Prior Codifications. — 1981 Ed., § 45-1712.

1973 Ed., § 5-912.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2013. Bylaws — Availability for examination; made part of declaration; amendment; compliance mandatory.

(a) The administration of every project constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in § 42-2006 shall be available for examination by all the co-owners, their duly authorized attorneys

or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(b) A true copy of said bylaws shall be annexed to the declaration referred to in § 42-2006 and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

(c) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager, the administrator, board of directors or of administration, or as specified in the bylaws or in proper case, by an aggrieved unit owner.

(Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 13; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Prior Codifications. — 1981 Ed., § 45-1713.

1973 Ed., § 5-913.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2014. Plat of condominium subdivision — Necessary; modification of administration.

(a) The bylaws must necessarily provide for at least the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors, or of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof;

(2) Method of calling or summoning the co-owners to assemble; that a majority of co-owners is required to adopt decisions, except as otherwise provided in this subchapter; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded;

(3) Care, upkeep, and surveillance of the project and its general or limited common elements and services;

(4) Manner of collecting from the co-owners for the payment of common expenses;

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the project and for the proper care of the general or limited common elements and to provide services for the project;

(6) Such restrictions on or requirements respecting the use and maintenance of the units and the use of the common elements as are designed to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners;

(7) Designation of person authorized to accept service of process in any action relating to 2 or more units or to the common elements as authorized

under § 42-2024. Such person must be a resident of and maintain an office in the District of Columbia; and

(8) Notice as to the existence or nonexistence of a declaration in trust for the enforcement of the lien for common expenses permitted under § 42-2019.

(b) The sole owner of the project, or if there be more than 1, the co-owners representing two-thirds of the votes provided for in § 42-2006 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

(Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 14; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945; Apr. 9, 1997, D.C. Law 11-255, § 48(c), 44 DCR 1271.)

Section references. — This section is referred to in §§ 42-2011, 42-2024, and 42-2025.

Prior Codifications. — 1981 Ed., § 45-1714.

1973 Ed., § 5-914.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2015. Books of receipts and expenditures; availability for examination; annual audit.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization.

(Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 15; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Prior Codifications. — 1981 Ed., § 45-1715.

1973 Ed., § 5-915.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2016. Common profits and expenses; taxation; proportional contributions for administration and maintenance mandatory; determination of amount due and assessment of lien.

(a) The common profits of the property shall be distributed among and the

common expenses shall be charged to the unit owners according to the percentages established by § 42-2006; provided, that for purposes of the application of subchapter II of Chapter 18 of Title 47, the council of co-owners shall, in accordance, with the provisions of said subchapter, be regarded as constituting an unincorporated business and shall file returns and pay taxes upon the taxable income derived from the common areas without regard to the “common profits” as defined in this subchapter.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the project and toward any other expenses lawfully agreed upon by the council of co-owners.

(c) No owner shall be exempt from contributing toward such common expenses by waiver of the use or enjoyment of the common elements both general and limited, or by the abandonment of the condominium unit belonging to him.

(d) Said contribution may be determined, levied, and assessed as a lien on the first day of each calendar or fiscal year, and may become and be due and payable in such installments as the bylaws may provide, and said bylaws may further provide that upon default in the payment of any 1 or more of such installments, the balance of said lien may be accelerated at the option of the manager, board of directors, or of management and be declared due and payable in full.

(Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 16; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Section references. — This section is referred to in §§ 42-2017, 42-2018, and 42-2019.

Prior Codifications. — 1981 Ed., § 45-1716.

1973 Ed., § 5-916.

Legislative history of Law 1-3. — For

legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor’s notes. — Superseding chapter: See Historical and Statutory Notes following § 42-2001.

CASE NOTES

In general.

Where contention that absent agreement to the contrary, legal fees in connection with suit by board of directors of condominium association protesting construction of subway should be borne by the co-owners named as plaintiffs and by the association was raised at meeting to vote on assessment for legal fees and it was explained to owners that counsel was retained only by the condominium and that other owners were invited to become parties only to make a better presentation, assessment of portion of legal fees against nonplaintiff owners would not be overturned; in any event, the co-owners agreed, by the required vote, to pay the legal fees. D.C. Code § 5-924(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

Condominium association’s counterclaim to recover assessment against condominium owners, who brought action challenging right of association to maintain suit protesting construction of subway and assessing costs of suit against owners, was not required to be filed in equity, on ground that the assessment was a lien against the property, since under the Horizontal Property Act, amounts due may be, but are not required to be, assessed as liens and association did not purport to file any such lien but proceeded in an action at law. D.C. Code § 5-916(d). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

Permitting condominium association to file counterclaim in owners’ suit challenging, among other things, assessment for costs of

maintaining association's suit protesting construction of subway was not abuse of discretion since had owners failed to prevail on their claim against the association the condominium would still have been obliged to file suit if owners refused to pay the assessment, as voted by the board; since claim for assessment was a compulsory counterclaim such an action would otherwise have been barred. D.C. Code § 5-901 et seq.; D.C. Code SCR, Civil Rule 13(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

Nonplaintiff condominium owners' due pro-

cess rights were not violated by assessment scheduled basing each co-owner's share on costs of suit brought by condominium association protesting construction of subway on his percentage of ownership; there was no state action in establishment of the assessment schedule and since the nonplaintiff owners voluntarily agreed to the schedule when they brought a unit, any attempt to change it was to be pursuant to attempt to alter the declaration and bylaws. D.C. Code § 5-924(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

§ 42-2017. Priority of liens; unpaid assessments upon sale or conveyance.

(a) The lien determined, levied and assessed in accordance with § 42-2016 shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

(1) Real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and water charges and sanitary sewer service charges levied on the condominium unit, and judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this paragraph.

(2) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the condominium unit prior to the assessment of the lien thereon or duly recorded on said unit after receipt of a written statement from the manager, board of directors, or of management reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

(b) Upon a voluntary sale or conveyance of a condominium unit all unpaid assessments against a grantor co-owner for his pro rata share of the expenses to which § 42-2016 refers shall first be paid out of the sales price or by the grantee in the order of preference set forth above. Upon an involuntary sale through foreclosure of a deed of trust, mortgage, or encumbrance having preference as set forth in paragraph (2) of subsection (a) of this section a purchaser thereunder shall not be liable for any installments of such lien as became due prior to his acquisition of title. Such arrears shall be deemed common expenses, collectible from all co-owners, including such purchaser.

(Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 17.)

Prior Codifications. — 1981 Ed., § 45-1717.
1973 Ed., § 5-917.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2018. Joint and several liability of purchaser and seller of unit for amounts owing under § 42-2016; purchaser's right of indemnity; right to statement of amount of unpaid assessments.

The purchaser of a condominium unit in a voluntary sale shall be jointly and severally liable with the seller for the amounts owing by the latter under § 42-2016 upon his interest in the condominium unit up to the time of conveyance; without prejudice to the purchaser's right to recover from the other party the amounts paid by him as such joint debtor; provided, that any such purchaser, or a lender under a deed of trust, mortgage, or encumbrance, or parties designated by them, shall be entitled to a statement from the manager, board of directors, or of administration, as the case may be, setting forth the amount of unpaid assessments against the seller or borrower, and the unit conveyed or encumbered shall not be subject to a lien for any unpaid assessment in excess of the amount set forth.

(Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 18.)

Section references. — This section is referred to in § 42-2019.

1973 Ed., § 5-918.

Prior Codifications. — 1981 Ed., § 45-1718.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2019. Supplemental method of enforcement of lien; rights and duties of subsequent purchaser; priority of lien, bond and trust; written statement of payments due under lien.

(a) In addition to proceedings available at law or equity for the enforcement of the lien established by § 42-2016, all the owners of property constituted into a horizontal property regime may execute bonds conditioned upon the faithful performance and payment of the installments of the lien permitted by § 42-2016 and may secure the payment of such obligations by a declaration in trust recorded among the land records of the District of Columbia, granting unto a trustee or trustees appropriate powers to the end that upon default in the performance of such bond, said declaration in trust may be foreclosed by said trustee or trustees, acting at the direction of the manager, board of directors, or of management, as is proper practice in the District of Columbia in foreclosing a deed of trust.

(b) And the bylaws may require in the event such bonds have been executed and such declaration in trust is recorded that any subsequent purchaser of a condominium unit in said horizontal property regime shall take title subject thereto and shall assume such obligations; provided, that the said lien, bond, and declaration in trust shall be subordinate to and a junior lien to liens for real estate taxes and other taxes arising out of or resulting from the ownership,

use, or operation of the common areas, liens for special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and liens for water charges and sanitary sewer service charges levied on the condominium unit, and to judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and to judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this section then or thereafter accruing against the unit and to the lien of any duly recorded deeds of trust, mortgages, or encumbrances previously placed upon the unit and said lien, bond, and declaration in trust shall be and become subordinate to any subsequently recorded deeds of trust, mortgages, or encumbrances; provided, that the lender thereunder shall first obtain from the manager, board of directors, or of administration a written statement as provided in § 42-2018 reflecting that payments due under this lien are current as of the date of recordation of such subsequent deed of trust, mortgage, or encumbrance.

(Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 19.)

Section references. — This section is referred to in § 42-2014.

Prior Codifications. — 1981 Ed., § 45-1719.

1973 Ed., § 5-919.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2020. Authority to obtain hazard insurance; held in trust; no effect on right to insure individual unit.

The manager or the board of directors, if required by the bylaws or by a majority of the co-owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the council of co-owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

(Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 20.)

Prior Codifications. — 1981 Ed., § 45-1720.
1973 Ed., § 5-920.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2021. Application of insurance proceeds to reconstruction; pro rata distribution in certain cases according to bylaws or decision of council.

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding subsection of this section, be applied to reconstruct the project.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the project and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect.

(Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 21; May 22, 1975, D.C. Law 1-3, § 2(2), (3), 21 DCR 3945.)

Section references. — This section is referred to in § 42-2011.

Prior Codifications. — 1981 Ed., § 45-1721.

1973 Ed., § 5-921.

Legislative history of Law 1-3. — For

legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2022. Sharing of reconstruction cost where project not insured or insurance indemnity insufficient.

Where the project is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new project costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any 1 or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under § 42-2017.

(Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 22; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

Section references. — This section is referred to in § 42-2011.

Prior Codifications. — 1981 Ed., § 45-1722.

1973 Ed., § 5-922.

Legislative history of Law 1-3. — For legislative history of D.C. Law 1-3, see Historical and Statutory Notes following § 42-2002.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2023. Unit identification; taxation of unit and proportionate share of common area; effect of forfeiture or tax sale of other units.

(a) For the purposes of assessment and taxation of property constituted into a horizontal property regime and to conform to the system of numbering squares, lots, blocks, and parcels for taxation purposes in effect in the District of Columbia, each condominium unit duly situate upon a subdivided lot and square shall bear a number or letter that will distinguish it from every other condominium unit situate in said lot and square.

(b) Each of said condominium units shall be carried on the records of the District of Columbia as a separate and distinct entity and all real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, shall be assessed, levied, and collected against each of said several separate and distinct units in conformity with the percentages of co-ownership established by § 42-2006, and in accordance with the provisions of law in effect in the District of Columbia relating to assessment, levying, and collection of real property taxes.

(c) The council of co-owners shall be liable for the filing of returns and payment of the tax on personal property located in the common areas and held for use or used in a trade or business or held for sale or rent.

(d) The title to an individual condominium unit shall not be divested or in anywise affected by the forfeiture or sale of any or all of the other condominium units for delinquent real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas; special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, or water charges and sanitary sewer service charges; provided, that the real estate taxes, the duly levied share of such other taxes and of such special assessments, and the water and sanitary sewer service charges on or against said individual condominium unit are currently paid.

(Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 23.)

Prior Codifications. — 1981 Ed., § 45-1723.
1973 Ed., § 5-923.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2024. Actions relating to common elements; service of process; removal of lien on proportionate share of common areas following judgment against other unit owners.

(a) Without limiting the right of any co-owner, actions may be brought on behalf of 2 or more of the unit owners, as their respective interests may appear, by the manager, or board of directors, or of administration with respect to any cause of action relating to the common elements or more than 1 unit.

(b) Service of process on 2 or more unit owners in any action relating to the common elements may be made on the person designated in the bylaws in conformity with § 42-2014(a)(7).

(c) In the event of entry of a final judgment as a lien against 2 or more unit owners, the unit owners of the separate units may remove their unit and their percentage interest in the common elements from the lien thereof by payment of the fractional proportional amounts attributable to each of the units affected. Said individual payment shall be computed by reference to the percentage established pursuant to § 42-2006. After such partial payment, partial discharge, or release or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of the lien of such judgment.

(d) Such partial payment, satisfaction, or discharge shall not prevent such a judgment creditor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, satisfied, or discharged.

(Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 24; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(e).)

Section references. — This section is referred to in § 42-2014.

Prior Codifications. — 1981 Ed., § 45-1724.

1973 Ed., § 5-924.

Editor's notes. — Supersededure of chapter: See Historical and Statutory Notes following § 42-2001.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

Nonplaintiff condominium owners' due process rights were not violated by assessment scheduled basing each co-owner's share on costs of suit brought by condominium association protesting construction of subway on his percentage of ownership; there was no state action in establishment of the assessment schedule and since the nonplaintiff owners voluntarily agreed to the schedule when they brought a unit, any attempt to change it was to be pursuant to attempt to alter the declaration and bylaws. D.C. Code § 5-924(a). *Owens v.*

Tiber Island Condominium Asso., 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

In general.

Suit by board of directors of condominium association protesting construction of subway was related to "common elements or more than one unit" within meaning of provision of Horizontal Property Act authorizing board to maintain actions relating to the common elements or more than one unit; matters encompassed by settlement agreement, including regulation of construction and vibration from trains, were rationally necessary for condominium's existence, upkeep and safety, which matters fall within statutory definition of "general common elements." D.C. Code §§ 5-902(f), (f)(7), 5-924(a). *Owens v. Tiber Island Condominium*

Asso., 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

Bringing of action protesting construction of subway in area where condominium was located fell within provision of bylaw authorizing board of directors to enforce, by litigation, the bylaws as well as to maintain any proceeding authorized by Horizontal Property Act, which Act itself authorized suit. D.C. Code § 5-924(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

Where contention that absent agreement to the contrary, legal fees in connection with suit by board of directors of condominium associa-

tion protesting construction of subway should be borne by the co-owners named as plaintiffs and by the association was raised at meeting to vote on assessment for legal fees and it was explained to owners that counsel was retained only by the condominium and that other owners were invited to become parties only to make a better presentation, assessment of portion of legal fees against nonplaintiff owners would not be overturned; in any event, the co-owners agreed, by the required vote, to pay the legal fees. D.C. Code § 5-924(a). *Owens v. Tiber Island Condominium Asso.*, 373 A.2d 890, 1977 D.C. App. LEXIS 316 (1977).

§ 42-2025. Liens available only against individual units; consent necessary for mechanics' or materialmen's liens; removal of lien on unit and proportionate share of common area following judgment against other unit owners.

(a) Subsequent to establishment of a horizontal property regime as provided in this subchapter, and while the property remains subject to this subchapter, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created and enforced only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership; provided, that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.01, against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the council of co-owners, the manager, or board of directors in accordance with this subchapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 40-301.01, against each of the units and shall be subject to the provisions of subsection (b) hereunder. Notice of said lien may be served on the person designated in conformity with § 42-2014(a)(7).

(b) In the event of filing of a lien against 2 or more units and their respective percentage interest in the common elements, the unit owners of the separate units may remove their unit and their percentage interest in the common elements appurtenant thereto from the said lien by payment, or may file a written undertaking with surety approved by the court as provided in § 40-303.16, of the fractional or proportional amounts attributable to each of

the units affected. Said individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to § 42-2006. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged.

(Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 25; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(f).)

Prior Codifications. — 1981 Ed., § 45-1725.
1973 Ed., § 5-925.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2026. Rule against perpetuities and rule against unreasonable restraints on alienation not applicable to horizontal property regimes; exception for individual units.

The rule of property known as the rule against perpetuities, and the rule of property known as the rule restricting unreasonable restraints on alienation, §§ 42-302 and 42-304 [repealed], shall not be applied to defeat any of the provisions of this subchapter, or of any declaration, bylaws, or other document executed in accordance with this subchapter as to the condominium project. This exemption shall not apply to estates in the individual condominium units.

(Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 26.)

Prior Codifications. — 1981 Ed., § 45-1726.
1973 Ed., § 5-926.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2027. Subchapter supplements existing code provisions; exception where conflict arises.

The provisions of the subchapter shall be in addition to and supplemental to all other provisions of law of the District of Columbia and wheresoever there appears in the provisions the words “square”, “lot”, “land”, “ground”, “parcel”, “property”, “block”, or other designation denoting a unit of land, where appropriate to implement this subchapter, after such descriptive terms, there shall be deemed inserted reference to a condominium unit, condominium subdivision, or horizontal property regime, whichever shall be appropriate to effect the ends and purposes of this subchapter; provided, that wherever the application of the provisions of this subchapter conflict with the application of such other provisions, the provisions of law generally applicable to buildings in like use in the District of Columbia shall prevail.

(Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 27.)

Prior Codifications. — 1981 Ed., § 45-1727.
1973 Ed., § 5-927.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2028. Regulations of Council and Zoning Commission; enforcement thereof.

In order to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia, the Council of the District of Columbia and the Zoning Commission of the District of Columbia are each hereby authorized to adopt such regulations as either deems proper, within its respective general authority, and the Mayor of the District of Columbia and the Zoning Commission are each hereby authorized to enforce such regulations, within its respective general authority.

(Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 28.)

Prior Codifications. — 1981 Ed., § 45-1728.

1973 Ed., § 5-928.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(132) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-2029. Subchapter interpreted to require compliance with all applicable laws; owners' responsibilities for taxes; methods of collection; no effect on eminent domain.

(a) This subchapter shall be interpreted in such a manner as to require each condominium unit and each horizontal property regime to be in compliance with all District of Columbia laws and regulations relating to property of like type, whether it be designed for residence, for office, for the operation of any industry or business, or for any other use. The owner of each condominium unit shall be responsible for the compliance of his unit with such laws and regulations, and the council of co-owners and any person designated by them to manage the regime shall be jointly and severally liable for compliance with all such laws and regulations in all matters relating to the common elements of the regime.

(b) Notwithstanding any provision of this subchapter, the owner of each condominium unit shall have the same responsibility for the payment of all taxes, assessments, and other charges due to the District of Columbia as does any other person or property owner similarly situated.

(c) Notwithstanding any provision of this subchapter, the method of enforcement available to the District of Columbia to collect any tax or assessment or any charge from any individual property owner or any building owner shall be available to collect taxes, assessments, and charges from individual condominium unit owners and from the council of co-owners.

(d) Nothing contained in this subchapter shall in any way be construed as affecting the right to institute and maintain eminent domain proceedings.

(Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 29.)

Prior Codifications. — 1981 Ed., § 45-1730.
1973 Ed., § 5-929.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

§ 42-2030. Right to individual water meters; common water service authorized; billing and collection.

(a) Notwithstanding any provision of this subchapter, the developer or co-owners of any horizontal property regime shall have the right to have installed for each and every individual unit a separately metered water service. Such installations shall be subject to all laws and regulations then or thereafter in effect in the District of Columbia. Upon the establishment of such separate water services each unit owner and his successor in title and persons occupying such units shall be responsible for the payment to the District of Columbia of all water and sewer charges rendered and the Mayor of the District of Columbia is authorized to enforce any and all of the remedies for collection of such charges as are authorized by law.

(b) A common water service is hereby expressly authorized for any horizontal property regime and in the event that a horizontal property regime is provided with a common water service to the charges for sewer and water service shall be billed to the person designated by the co-owners, pursuant to the bylaws, to manage the regime. In the event that the entire sewer and water charges are not paid within the time specified by law for the payment of sewer and water charges, the Mayor shall be authorized to enforce payment in any manner authorized by law, including, but not limited to, the assessment of an additional charge for late payment, the shutting off of water to the regime and the enforcement of the liens for nonpayment of such charges against the individual units in conformity with the percentage of co-ownership established by § 42-2006.

(Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 30.)

Prior Codifications. — 1981 Ed., § 45-1731.
1973 Ed., § 5-930.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-2031. Authority vested in Board of Commissioners unaffected; delegation of functions.

Nothing in this subchapter or in any amendments made by this subchapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this subchapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with § 3 of such plan.

(Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 31.)

Prior Codifications. — 1981 Ed., § 45-1732.

1973 Ed., § 5-931.

Editor's notes. — Supersedure of chapter: See Historical and Statutory Notes following § 42-2001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively.

Subchapter II. Council Authority.

§ 42-2051. Council authorized to prohibit conversions to condominiums.

In addition to other authority delegated to it, and in accordance with § 406 of Reorganization Plan No. 3 of 1967, the Council of the District of Columbia is authorized, by regulation, to prohibit the establishment, after the effective date of such regulation, of any horizontal property regime, real estate condominiums project, or other conversion of units in a multiunit structure into a condominium pursuant to this subchapter.

(Aug. 29, 1974, 88 Stat. 794, Pub. L. 93-395, § 2.)

Prior Codifications. — 1981 Ed., § 45-1729.

1973 Ed., § 5-928a.

References in text. — Reorganization Plan No. 3 of 1967, referred to in this section, is set forth in its entirety in Volume 1.

Editor's notes. — Supersedure of chapter:

See Historical and Statutory Notes following § 42-2001.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

SUBTITLE IV. HOUSING ENHANCEMENT PROGRAMS.

CHAPTER 21. HOMESTEAD HOUSING PRESERVATION.

Sec.	Sec.
42-2101. Findings.	42-2106. Program guidelines.
42-2102. Purpose.	42-2107. Property transfer.
42-2103. Definitions.	42-2108. Abatement agreement.
42-2104. Homestead Housing Preservation Program and Homestead Program Administration established.	42-2109. Proposals to develop a Technical Training Program.
42-2105. Program inventory.	42-2110. Appropriation; reports.
42-2105.01. Privatization of title services.	42-2111. Notice.

§ 42-2101. Findings.

The Council of the District of Columbia ("Council") finds that:

(1) There exists an immediate crisis regarding the critical shortage of decent and affordable low- and moderate-income housing resulting in significant measure from the lack of maintenance and the deterioration of rental housing, the lack of adequate financial investment in rental housing by owners and private investors, the abandonment of low- and moderate-income rental housing by owners resulting from outstanding government liens, the lack of incentives for tenants to improve the rental property, and the ineffectiveness of traditional means of abating housing code violations on rental property.

(2) Based on 1980 census data, there are approximately 9,800 units that are currently vacant and approximately 60,000 units in need of rehabilitation.

(3) There are numerous properties that, because of their deteriorating condition, adversely affect the health, comfort, safety, and welfare of those persons who reside in and around them.

(Aug. 9, 1986, D.C. Law 6-135, § 2, 33 DCR 3771.)

Prior Codifications. — 1981 Ed., § 45-2701.

Legislative history of Law 6-135. — Law 6-135, the "Homestead Housing Preservation Act of 1986," was introduced in Council and assigned Bill No. 6-168, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on

June 13, 1986, it was assigned Act No. 6-173 and transmitted to both Houses of Congress for its review.

Editor's notes. — Approval of community development objectives and projected use of funds: Pursuant to Resolution 6-768, the "Community Development Block Grant Program Resolution of 1986," effective July 8, 1986, the Council approved the revised program description and authorized the allocation of funds.

§ 42-2102. Purpose.

In enacting this chapter, the Council supports the following statutory purposes:

(1) To provide decent and affordable rental opportunities for low-income persons and homeownership opportunities to low-and moderate-income persons;

(2) To enable organized groups of low-and moderate-income persons to obtain skills to repair, maintain, and manage residential property;

(3) To afford highly-motivated low-and moderate-income persons the opportunity to participate fully in the production of their own decent and affordable homes;

(4) To facilitate community development that would create jobs for low and moderate income District of Columbia residents, as well as enhance the quality of life in residential areas by establishing businesses and other community services designed to meet the needs of the neighborhood;

(5) To provide nonprofit organizations and developers the opportunity to purchase property in the program in exchange for providing needed community service to District residents; and

(6) To strengthen neighborhoods by returning blighted, vacant, and neglected properties to productive use.

(Aug. 9, 1986, D.C. Law 6-135, § 3, 33 DCR 3771; June 11, 1999, D.C. Law 13-11, § 2(a), 46 DCR 548; Apr. 19, 2002, D.C. Law 14-114, § 801(a), 49 DCR 1468.)

Prior Codifications. — 1981 Ed., § 45-2702.

Effect of amendments. — D.C. Law 13-11 added pars. (4) and (5).

D.C. Law 14-114, in par. (1), substituted “To provide decent and affordable rental opportunities for low-income persons and” for “To provide”; made nonsubstantive changes in pars. (4) and (5); and added par. (6).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Homestead Housing Preservation Temporary Amendment Act of 1998 (D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Homestead Housing Preservation Emergency Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(a) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

Legislative history of Law 6-135. — For

legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2001.

Legislative history of Law 13-11. — Law 13-11, the “Homestead Housing Preservation Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-50, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 2, 1999, and March 2, 1999, respectively. Signed by the Mayor on March 22, 1999, it was assigned Act No. 13-48 and transmitted to both Houses of Congress for its review. D.C. Law 13-11 became effective on June 11, 1999.

Legislative history of Law 14-114. — Law 14-114, the “Housing Act of 2002,” was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

§ 42-2103. Definitions.

For the purposes of this chapter, the term:

(1) Repealed.

(1A) “Commercial property” means income producing property as identified under zoning classifications, that would allow for such uses as office buildings, retail stores, restaurants, and service facilities pursuant to Chapter 7 of Title 11 of the District of Columbia Municipal Regulations (July 1995).

(1B) “Community service” means reasonable and needed services to District residents for at least 10 years. Examples of reasonable and needed services include, but are not limited to, providing free food and clothing to the

community; providing free shelter to the homeless on a temporary or long term basis; providing low or no-cost educational programs; providing vocational training programs for District residents with mental or physical disabilities; or providing housing for transition programs for District residents with mental or physical disabilities.

(1C) "Condominium or unit owners association" means an association of owners of individual units organized and incorporated in accordance with Chapter 9 of Title 29, for the purposes of the self-government of the condominium in accordance with subchapter III of Chapter 19 of this title.

(2) "Cooperative housing association" means an association that is incorporated in accordance with Chapter 9 of Title 29, and organized for the purpose of owning and operating residential real property in the District of Columbia ("District"), the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease, or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement. To qualify for participation in the Program established pursuant to § 42-2104, a cooperative housing association must be organized for the purpose of providing homeownership opportunities for low-or moderate-income persons.

(3) "Dwelling unit" means any room or group of rooms forming a single unit that is used or intended to be used for living, sleeping, and the preparation and eating of meals, and that is located within a building that is wholly or partially used or intended to be used for living and sleeping by human occupants.

(3A) "Homesteader (Commercial)" means a nonprofit organization or developer entitled to purchase both commercial and multi-family residential property included in the program established under § 42-2104 in exchange for providing community service to the District and maintaining ownership of that property for at least 10 years under terms of an abatement agreement entered into between the Mayor and the nonprofit organization or developer.

(4) "Homesteader (Residential)" means an individual or an organization representing an individual who purchases a dwelling unit through the Program and enters into an abatement agreement.

(5) "Low-income persons" means persons or families whose annual household income as determined by the Administrator does not exceed the limits for lower income families established by the Mayor for use in connection with the Tenant Assistance Program established pursuant to subchapter III of Chapter 35 of this title.

(6) "Mayor" means the Mayor of the District.

(7) "Moderate-income persons" means persons or families whose annual household income as determined by the Administrator does not exceed 120% of the lower income guidelines established pursuant to 42 U.S.C. § 1437f, for the Washington Standard Metropolitan Statistical Area ("SMSA"), as the median is determined by the United States Department of Housing and Urban Development and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District incomes by local or regional government agencies.

(8) "Large multi-family dwelling" means a building containing 5 or more dwelling units each with access to the outside directly or through a common stairway or hallway.

(9) "Nonprofit developer" means a corporation that has been approved by the Internal Revenue Service as exempt from federal income tax under 26 U.S.C. § 501(c)(3), and that is organized for the purpose of developing housing for low-or moderate-income persons.

(10) "Single-family dwelling" means a building containing 1 dwelling unit.

(11) "Small multi-family dwelling" means a building containing 2 to 4 dwelling units each with access to the outside directly or through a common stairway or hallway.

(12) "Tenant association" means a condominium or cooperative housing association that represents a minimum of 51% of the households in a building, as determined by rules established by the Administrator.

(Aug. 9, 1986, D.C. Law 6-135, § 4, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(a), 33 DCR 7836; June 11, 1999, D.C. Law 13-11, § 2(b), 46 DCR 5487; Apr. 19, 2002, D.C. Law 14-114, § 801(b), 49 DCR 1468; Apr. 24, 2007, D.C. Law 16-305, § 60(a), 53 DCR 6198; July 2, 2011, D.C. Law 18-378, § 3(hh), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 45-2703.

Effect of amendments. — D.C. Law 13-11 added new paragraphs (1A), (1B), (1C), and (3A); in Paragraph (4) struck the word "Homesteader" and inserted the phrase "Homesteader (Residential)" in its place; and in Paragraph (12) struck the phrase "cooperative housing association" and inserted the phrase "condominium or cooperative housing association" in its place.

D.C. Law 14-114, repealed par. (1); in par. (3A), substituted "Mayor" for "Administrator", and rewrote par. (4). Prior to repeal and amendment, pars. (1) and (4) read, respectively, as follows:

"(1) 'Administrator' means the Administrator of the Homestead Program Administration."

"(4) 'Homesteader (Residential)' means an individual or an organization representing an individual who is entitled to occupy a dwelling unit in a building that is included in the Program established under § 42-2104 and who is occupying or will occupy the dwelling unit under an abatement agreement entered into between the Administrator and the individual or organization."

D.C. Law 16-305, in par. (1B), substituted "disabilities" for "handicaps".

D.C. Law 18-378, in pars. (1C) and (2), validated previously made technical corrections.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b), (c), (d) of Homestead Housing Preservation Temporary Amendment Act of 1998

(D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(b)-(d) of the Homestead Housing Preservation Emergency Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(b) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 45-2701.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-11. — For Law 13-11, see notes following § 45-2702.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 42-1218.

§ 42-2104. Homestead Housing Preservation Program and Homestead Program Administration established.

(a) There is established a Homestead Housing Preservation Program ("Program"), to be administered by the Mayor, the purpose of which is to provide a program under which title to property acquired by the District pursuant to §§ 47-847 and 47-1303, or through District-initiated foreclosure, donation, or purchase, may be transferred to organizations or individuals meeting the criteria established in §§ 42-2106 to 42-2108 and any rules promulgated pursuant to this chapter. The Program shall not include owner-occupied, single-family dwellings.

(b) The Program established under this chapter shall be administered by the Mayor through the Homestead Program Administration.

(c) Within 90 days after August 9, 1986, the Administrator shall develop and transmit to the Council for consideration in accordance with this subsection rules to carry out the purposes of this chapter. At a minimum, the rules shall establish procedures for administering the Program, define terms not otherwise defined in this chapter, and formulate standards consistent with this chapter for participation in the Program. Simultaneous with transmittal of the rules, the Administrator shall transmit to the Council for approval under this section an administrative plan for the Program which shall contain, at minimum, the following information:

(1) A current list of all buildings that qualify for inclusion in the Program; a statement of the address, ward location, and condition of each building; and a discussion of the suitability of each building for transfer to homesteaders;

(2) Notice provisions for owners of property to be included in the Program and samples of any notice that will be sent to owners of property to be included in the Program prior to the property becoming available for purchase by individuals or organizations under the Program;

(3) An explanation of any changes in existing notices to property owners necessitated by this chapter;

(4) A current dollar statement of family income limits for the Program;

(5) A sample Request for Proposals ("RFP") for buildings that are to be included in the Program;

(6) A sample RFP for the Technical Training Program described in § 42-2109;

(7) A sample of the abatement agreement or agreements that will be used in the Program; and

(8) Samples of all loan application forms that will be used in the Program.

(d) All rules issued pursuant to this chapter and the administrative plan required by subsection (c) of this section shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days when the Council is in recess. The Council may adopt a resolution disapproving the rules or administrative plan, in whole or part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the rules or administrative plan before the expiration of the 45-day

review period, the rules or administrative plan shall become effective at the expiration of the 45-day review period.

(e) Repealed.

(Aug. 9, 1986, D.C. Law 6-135, § 5, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(b), 33 DCR 7836; Apr. 3, 2001, D.C. Law 13-226, § 3(c), 48 DCR 1603; Apr. 19, 2002, D.C. Law 14-114, § 801(c), 49 DCR 1468; June 12, 2003, D.C. Law 14-310, § 14(a), 50 DCR 1092.)

Section references. — This section is referred to in §§ 42-2103, 42-2106, 42-2107 and 42-2111.

Prior Codifications. — 1981 Ed., § 45-2704.

Effect of amendments. — D.C. Law 13-226, in subsec. (a), substituted “§ 47-847 and 47-1303” for “§ 47-847”.

D.C. Law 14-114, in subsec. (a), substituted “, to be administered by the Mayor” for “for the District” and substituted “or through District-initiated foreclosure, donation, or purchase, may be transferred” for “may be transferred”; in subsec. (b), substituted “Mayor through” for “Administrator of”; and repealed subsec. (e) which, prior to repeal, read:

“(e) There is hereby established within the District of Columbia Department of Housing and Community Development, a Homestead Program Administration, to be headed by an Administrator, to be appointed by the Mayor with the advice and consent of the Council. In nominating the Administrator, the Mayor shall give preference to a person who has demonstrated administrative experience with a homesteading program.”

D.C. Law 14-310, in subsec. (a), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(c) and 6(b) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-524, January 5, 2001, 48 DCR 624).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 13-226. — Law 13-226, the “Redevelopment Land Agency Dis-

position Review Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-185, which was referred to the Committee Economic Development. The Bill was adopted on first and second readings on July 11, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-498 and transmitted to both Houses of Congress for its review. D.C. Law 13-226 became effective on April 3, 2001.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Editor’s notes. — Approval of amendments to rules for real property taxes: Pursuant to Resolution 7-72, the “Homestead Housing Tax Sale Amendment Approval Resolution of 1987,” effective June 2, 1987, the Council approved proposed amendments to Chapter 3, Title 9 DCMR, rules for real property taxes which were transmitted to Council by the District of Columbia Homestead Program Administration, Department of Housing and Community Development.

Approval, in part, and disapproval, in part, of proposed rules and administrative plan: Pursuant to Resolution 7-97, the “Homestead Housing Program Approval and Disapproval Resolution of 1987,” effective July 14, 1987, the Council, approved, in part, and disapproved, in part, the proposed rules and administrative plan for the Homestead Housing Preservation Program.

§ 42-2105. Program inventory.

(a) The Mayor shall identify and publish in the D.C. Register on an annual basis a list of properties, the titles to which are available for transfer under the Program. The properties shall be properties for which the statutory redemp-

tion period has lapsed. In addition to publication in the D.C. Register, the list shall be published in at least 2 major newspapers circulated in the District and through other reasonable methods determined by the Mayor and shall be transmitted to the Council, Advisory Neighborhood Commissions, Community Development Corporation, and any other organizations the Mayor deems appropriate.

(b) Along with the list of properties required to be published under subsection (a) of this section, the Mayor shall publish a RFP inviting the submission of proposals for purchase of any of the properties listed. Proposals submitted to the Mayor shall be evaluated in accordance with this chapter and rules promulgated pursuant to this chapter. Each proposal shall outline financial and structural plans for the development, repair, occupancy, maintenance, and ownership of the property and shall contain any other information required by this chapter or any rules promulgated pursuant to this chapter.

(c) The Mayor may accept unsolicited proposals for any property that has been offered for sale but that was not purchased through the RFP process. A proposal that the Mayor approves shall be submitted to the Council for approval, in whole or in part, by resolution. If the Council does not approve or disapprove the proposed resolution within 60 calendar days, excluding days of Council recess, the proposed resolution shall be deemed disapproved.

(d) The Director of the District of Columbia Department of Housing and Community Development is authorized, at his or her discretion, as deemed necessary to achieve the purposes of this chapter, and when it serves the District's interest in producing affordable housing, to transfer real property in the Program inventory to other programs administered by the District government.

(Aug. 9, 1986, D.C. Law 6-135, § 6, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(c), 33 DCR 7836; June 11, 1999, D.C. Law 13-11, § 2(c), 46 DCR 5487; Apr. 19, 2002, D.C. Law 14-114, § 801(d), 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 35(c), 49 DCR 8140; Mar. 2, 2007, D.C. Law 16-192, § 2112, 53 DCR 6899.)

Prior Codifications. — 1981 Ed., § 45-2705.

Effect of amendments. — D.C. Law 13-11 struck the phrase "a semiannual" and inserted the phrase "an annual" in its place.

D.C. Law 14-114, in subsec. (a), substituted "Mayor" for "Administrator"; in subsec. (b), substituted "Mayor" for "Administrator" and substituted "development, repair" for "repair" in the third sentence; and added subsec. (c).

D.C. Law 14-213 made a technical change in the enacting clause of D.C. Law 14-114, § 801(d)(2)(B), which resulted in no change in text.

D.C. Law 15-105 attempted to make the same technical amendment as D.C. Law 14-213, therefore, the amendment was ineffective.

D.C. Law 16-192 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(e) of Homestead Housing Preservation Temporary Amendment Act of 1998 (D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Homestead Housing Preservation Emergency Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(c) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

For temporary (90 day) amendment of section, see § 2112 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2112 of Fiscal Year 2007 Budget

Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2112 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 13-11. — For Law 13-11, see notes following § 42-2102.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 47-820.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Short title. — Short title: Section 2111 of D.C. Law 16-192 provided that subtitle I of title II of the act may be cited as the “Homestead Housing Amendment Act of 2006”.

§ 42-2105.01. Privatization of title services.

The Mayor may contract with, and pay all reasonable costs of, any person to research and quiet title to properties to be included in the Program. If services are provided by a person under this section and the property is subsequently redeemed by the owner or another party having an interest in the property, as allowed under § 47-847, the costs of the services shall be paid by the District and shall be included in the costs due to the District by the redeeming party under § 47-847.

(Aug. 9, 1986, D.C. Law 6-135, § 6a, as added Apr. 19, 2002, D.C. Law 14-114, § 801(e), 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Editor’s notes. — Section 1101 of D.C. Law 14-114 provided: “The Mayor, pursuant to Title

I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall promulgate rules to implement this act.”

§ 42-2106. Program guidelines.

(a) Proposals for large multi-family dwellings shall be considered only in accordance with the following rules of priority:

(1) A proposal from a qualified tenant association shall be considered first.

(2) If there is no proposal from a qualified tenant association or if the proposal does not meet criteria set forth in the RFP and rules promulgated pursuant to this chapter, proposals from condominium and cooperative housing associations shall be considered next.

(3) If there are no proposals from condominium and cooperative housing associations or if the proposals do not meet criteria set forth in the RFP and rules promulgated pursuant to this chapter, proposals from nonprofit developers, and for-profit developers who agree to make 100% of the units affordable to low- and moderate-income persons with no less than 50% of the units affordable to low-income persons, for the development of condominium and cooperative housing opportunities shall be considered next.

(4) If there are no proposals for the development of condominium or cooperative housing, proposals for the development of rental housing for low-income persons shall be considered next.

(b) Except in the case of rental buildings, the proprietary interests in properties sold through the Program shall be allocated as follows:

(1) No less than 25% of the proprietary interests in large multi-family dwellings shall be transferred to low- or moderate-income households.

(2) No less than 15% of the proprietary interests in large multi-family dwellings shall be transferred to low-income households.

(3) No less than 50% of the dwelling units and proprietary interests in large multi-family, small multi-family, and single-family properties each year shall be transferred to low- or moderate-income families.

(c) Proposals for single-family and small multi-family dwellings may be considered in accordance with standards developed by the Mayor and approved by the Council pursuant to § 42-2104. To the extent financially feasible, priority shall be given to purchasers who are low- or moderate-income persons.

(d) Proposals for commercial property shall be considered on a competitive basis in accordance with the following rules of priority:

(1) A proposal from a tenant or tenant association which demonstrates the ability to obtain financing shall be considered first.

(2) If there is no proposal from a qualified tenant or tenant association, or if the proposal does not meet criteria set forth in the RFP and rules promulgated pursuant to this chapter, proposals from condominium or cooperative associations and nonprofit developers which demonstrate the ability to obtain financing shall be considered next.

(3) If there is no proposal from a condominium or cooperative association or nonprofit developer, or if the proposal does not meet criteria set forth in the RFP and rules promulgated pursuant to this chapter, proposals from proprietary developers shall be considered next.

(Aug. 9, 1986, D.C. Law 6-135, § 7, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(d), 33 DCR 7836; June 11, 1999, D.C. Law 13-11, § 2(d), 46 DCR 5487; Apr. 19, 2002, D.C. Law 14-114, § 801(f), 49 DCR 1468; Dec. 11, 2007, D.C. Law 17-57, § 2, 54 DCR 10712.)

Section references. — This section is referred to in § 42-2104.

Prior Codifications. — 1981 Ed., § 45-2706.

Effect of amendments. — D.C. Law 13-11 in subsec. (a)(2) struck the phrase “cooperative housing associations” and inserted the phrase “condominium and cooperative housing associations” in its place; in subsec. (a) (3) struck the phrase “cooperative housing” and inserting the phrase “condominium and cooperative housing” wherever it appears; and added new subsection (d).

D.C. Law 14-114, added subsec. (a)(4); rewrote subsec. (b); and in subsec. (c), substituted “Mayor” for “Administrator”. Subsec. (b) had read as follows:

“(b) At least 25% of the proprietary interests in large multi-family dwellings in the Program shall be transferred to low-or moderate-income persons. No less than 15% of the proprietary

interests in large multi-family dwellings in the Program shall be transferred to low-income persons. At least 50% of the total dwelling units and proprietary interests in the Program shall be transferred to low-or moderate-income persons.”

D.C. Law 17-57, in subsec. (a)(3), substituted “nonprofit developers, and for-profit developers who agree to make 100% of the units affordable to low- and moderate-income persons with no less than 50% of the units affordable to low-income persons,” for “nonprofit developers”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Homestead Housing Preservation Temporary Amendment Act of 1998 (D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(f) of the Homestead Housing Preservation Emergency

Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(d) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 13-11. — For Law 13-11, see notes following § 42-2102.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 17-57. — Law 17-57, the “Homestead Housing Preservation Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-40 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 17, 2007, it was assigned Act No. 17-131 and transmitted to both Houses of Congress for its review. D.C. Law 17-57 became effective on December 11, 2007.

CASE NOTES

ANALYSIS

Construction and application.
For-profit developer.

Construction and application.

Regulation of District of Columbia Department of Housing and Community Development (DHCD), allowing sale of property, pursuant to the District’s Homestead Program created by the Homestead Housing Preservation Act of 1986 (HHPA), to “other” entities, could not amend provision of HHPA limiting sale of property to tenant associations, cooperative housing associations, or non-profit developers, so as to allow sale of property to for-profit developer; to the extent that regulation was inconsistent with HHPA, regulation was invalid. *District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 2010 D.C. App. LEXIS 7 (2010).

For-profit developer.

For-profit developer was on constructive notice that District of Columbia lacked statutory capacity to sell property to it, pursuant to the

District’s Homestead Program created by the Homestead Housing Preservation Act of 1986 (HHPA), and thus District could not be estopped from disavowing contract for sale; even if District had made representations that it had authority to sell property to for-profit developer, developer’s reliance on District’s alleged representations could not have been reasonable. *District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 2010 D.C. App. LEXIS 7 (2010).

District of Columbia lacked statutory capacity to sell, pursuant to the District’s Homestead Program created by the Homestead Housing Preservation Act of 1986 (HHPA), residential apartment building to for-profit developer, and thus contract for sale of building to for-profit developer was void; HHPA provided that District could sell property under the program “only” to tenant associations, cooperative housing associations, or non-profit developers. *District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 2010 D.C. App. LEXIS 7 (2010).

§ 42-2107. Property transfer.

(a) The Mayor shall sell each residential building in the Program for \$250 per dwelling unit and each commercial building for up to \$5,000 per unit. Commercial, single-family and small multi-family dwellings shall be sold at prices determined by the Mayor after considering the income level of the purchaser, the condition of the property, and such other factors as the Mayor deems appropriate pursuant to rules. In transferring single-family dwellings with one dwelling unit, priority shall be given first to the sale to a low-income person and priority shall be given next to the sale for the development of rental units for low-income persons. Any rules or factors developed by the Mayor for consideration in connection with the transfer of single-family and small multi-family dwellings shall be transmitted to the Council for review and approval pursuant to § 42-2104.

(b) Individuals renting commercial space or residing in buildings in which dwelling units are rented or offered for rent at the time of inclusion of the building in the Program shall be given the right of first refusal to purchase a proprietary interest in the unit in which they reside or in a comparable unit within the building provided that the resident agrees to join a condominium association, tenant association, or cooperative housing association that qualifies for participation in the Program. Those individuals who do not elect to purchase shall have the right to relocation assistance, consistent with § 42-3403.02. If the individual is an elderly tenant, within the meaning of § 42-3402.08, he or she shall be entitled to the protection afforded by that section.

(c) Individuals who are not tenants in a building included in the Program shall participate in the Program individually or through a nonprofit developer, condominium association, or cooperative housing association.

(d) With the exception of those individuals occupying a building at the time that the building is included in the Program, acceptance of individuals as potential homesteaders for the purchase of the building shall be limited to first-time home buyers, as defined in rules promulgated by the Mayor and approved by the Council pursuant to § 42-2104, and commercial properties shall be offered to developers through a competitive bidding process.

(e) The Mayor may provide to low- or moderate-income individuals a second mortgage not to exceed \$10,000 per dwelling unit for the cost of repairs of the unit. The homesteaders shall not be required to repay the mortgage until the unit is transferred, as that term is defined in rules promulgated by the Mayor and approved by the Council pursuant to § 42-2104, at which time the entire \$10,000 shall become due and owing, plus interest.

(Aug. 9, 1986, D.C. Law 6-135, § 8, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(e), 33 DCR 7836; June 11, 1999, D.C. Law 13-11, § 2(e), 46 DCR 5487; Apr. 19, 2002, D.C. Law 14-114, § 801(g), 49 DCR 1468.)

Section references. — This section is referred to in §§ 42-2104 and 42-2802.

Prior Codifications. — 1981 Ed., § 45-2707.

Effect of amendments. — D.C. Law 13-11 rewrote subsec. (a); in subsec. (b) struck the phrase “residing in buildings” and insert the phrase “renting commercial space or residing in buildings” in its place, struck the phrase “tenant association” and inserted the phrase “condominium association, tenant association,” in its place; in subsec. (c) added the phrase “condominium association,” after the phrase “nonprofit developer”; and in subsec. (d) inserted the phrase “, and commercial properties shall be offered to developers through a competitive bidding process” at the end of the sentence after the phrase “pursuant to section 45-2704”. Prior to amendment subsec. (a) provided:

“(a) The Administrator shall sell each residential building in the Program for \$250 per

dwelling unit and each commercial building for up to \$5,000 per unit. Commercial, single-family, and small multi-family dwellings shall be sold at prices determined by the Administrator after considering the income level of the purchaser, the condition of the property, and such other factors as the Administrator deems appropriate pursuant to rules. In transferring single-family dwellings with one dwelling unit, priority shall be given to low-income persons. Any rules or factors developed by the Administrator for consideration in connection with the transfer of single-family and small multi-family dwellings shall be transmitted to the Council for review and approval pursuant to § 45-2704.”

D.C. Law 13-91 validated a previously made technical amendment.

D.C. Law 14-114, in subsec. (a), in the third sentence, substituted “priority shall be given first to the sale to a low-income person and priority shall be given next to the sale for the development of rental units for low-income per-

sons" for "priority shall be given low-income persons"; in subsec. (d), substituted "potential homesteaders for the purchase of the building" for "potential homesteaders"; and substituted "Mayor" for "Administrator" throughout the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(g) through (j) of Homestead Housing Preservation Temporary Amendment Act of 1998 (D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(g)-(j) of the Homestead Housing Preservation Emergency Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(e) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 13-11. — For Law 13-11, see notes following § 42-2102.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

§ 42-2108. Abatement agreement.

(a) At the time of settlement, the homesteader shall take free and clear title to property subject only to the terms of an abatement agreement and this chapter. Each homesteader at the time of property settlement shall enter into an abatement agreement with the District, which shall include, but shall not be limited to, requirements that the homesteader perform the following:

(1) The homesteader (Residential) shall maintain the property as his or her principal dwelling place and residence for a period commencing with the date of property settlement and ending on the 5th anniversary of the settlement date. If the property cannot be lawfully occupied on the settlement date, the homesteader shall be considered in compliance with this residency provision if he or she takes occupancy within a reasonable period of time after the property has been brought into compliance with the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986 ("Building Code"), and the District of Columbia Housing Code (14 DCMR Chapter 1-14) ("Housing Code").

(1A) The homesteader (Commercial) shall maintain title and ownership of the property for a period commencing with the date of property settlement and ending on the 10th anniversary of the settlement date. If the property cannot be lawfully occupied on the settlement date, the homesteader (Commercial) shall be considered in compliance with this ownership provision if the nonprofit organization or developer takes physical possession of the property within a reasonable period of time after the property has been brought into compliance with 12A DCMR, and 14 DCMR Chapters 1-14 ("Housing Code").

(1B) The homesteader (Commercial) shall provide needed community services for at least 10 years to the residents of the District.

(2) The homesteader (Residential) shall participate in a Technical Training Program to be administered and conducted by groups selected pursuant to § 42-2109.

(3) The homesteader (Residential) shall improve the property within 12 months of the starting date of the Technical Training Program to meet all applicable requirements of the Building Code and Housing Code.

(4) The homesteader (Residential) shall not sell, convey, lease, or other-

wise alienate the property, or place liens or encumbrances on it, for at least 5 years from the date of property settlement without the written approval of the District.

(4A) The homesteader (Commercial) shall not sell, convey, or otherwise alienate the property, or place liens or encumbrances on it, for at least 10 years from the date of property settlement without written approval of the District.

(5) During the 5 or 10-year period, the homesteader shall permit periodic inspections of the property by the District or its agents or other persons duly authorized by the District for the purpose of determining the homesteader's compliance with the requirements of the Program.

(6) The homesteader (Residential) shall maintain at all times during the 5 or 10-year period fire and extended coverage insurance with a face amount equal to at least 80% of the fair market value of the property.

(7) The homesteader (Residential) shall pay all taxes, fees, utility charges and assessments on the property from the date of settlement, except as otherwise provided in District law.

(b) Organizations to which residential buildings have been transferred shall certify that their members or other individuals who will reside in the buildings will meet the requirements of the abatement agreement and any other terms and conditions of the transfer imposed by the Mayor. Organizations to which commercial properties have been transferred shall certify that they will meet the terms of an abatement agreement that would require the rehabilitation of the property.

(b-1) At the time of settlement, an organization purchasing a property for residential rental use shall take free and clear title, subject only to the terms of an abatement agreement and this chapter. The purchaser shall enter into an abatement agreement with the District, which shall include requirements that the purchaser, for a period of at least 20 years, shall:

(1) Maintain the property in decent, safe, and sanitary condition and in conformity with all building codes;

(2) Reserve no fewer than 50% of units for low-income and moderate-income households and charge rents affordable to low-income households in no fewer than 25% of units;

(3) Allow periodic inspections of the property by the District or its agents;

(4) Maintain fire and extended coverage insurance with a face amount equal to at least 80% of the fair market value of the property; and

(5) Pay all taxes, fees, utility charges, and assessments on the property.

(c) Notwithstanding the provisions of subsection (a) of this section, if the homesteader (Residential) dies or has a total disability during the first 5 years after the original transfer to the homesteader (Residential), the homesteader's personal representative may petition the Mayor on behalf of the homesteader's heirs, devisees, and immediate family for an exemption from all or part of the terms of the abatement agreement. In ruling on the petition, the Mayor shall attempt to avoid any unreasonable burden upon the homesteader's heirs, devisees, and immediate family.

(d) In the event a homesteader (Residential), or one of its organizational members, has received written approval from the District to alienate his or her

interest in the property during the first 5 years of ownership, the homesteader (Residential) shall pay to the District an assessment fee according to the following formula:

(1) Eighty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 0 to 15 months after the original acquisition;

(2) Sixty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 16 to 30 months after the original acquisition;

(3) Forty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 31 to 45 months after the original acquisition; and

(4) Twenty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 46 to 60 months after the original acquisition.

(e) Assessment fees shall not take priority over any mortgage liens.

(f) The holder of a mortgage secured by the homesteader's building or dwelling unit shall be exempt from the terms of the abatement agreement if the homesteader (Residential) defaults on the mortgage.

(Aug. 9, 1986, D.C. Law 6-135, § 9, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(f), 33 DCR 7836; Mar. 21, 1987, D.C. Law 6-216, § 13(i), 34 DCR 1072; June 11, 1999, D.C. Law 13-11, § 2(f), 46 DCR 5487; Apr. 19, 2002, D.C. Law 14-114, § 801(h), 49 DCR 1468; Apr. 24, 2007, D.C. Law 16-305, § 60(b), 53 DCR 6198.)

Section references. — This section is referred to in § 42-2104.

Prior Codifications. — 1981 Ed., § 45-2708.

Effect of amendments. — D.C. Law 13-11 in pars. (1) and (4) of subsec. (a) inserted the word "(Residential)" after the word "homesteader"; added subsec. (a) pars. (1A) (1B) and (4A); and in pars. (5) and (6) of subsec. (a) inserted the phrase "or 10" after the number "5". The amendment in subsec. (b) inserted the word "residential" after the phrase "Organizations to which" and added a new sentence at the end of the phrase "the Mayor." providing "Organizations to which commercial properties have been transferred shall certify that they will meet the terms of an abatement agreement that would require the rehabilitation of the property."

D.C. Law 14-114, in subsec. (a)(7), substituted "taxes, fees, utility charges" for "taxes, fees,"; added subsec. (b-1); and substituted "Mayor" for "Administrator" wherever it appears in the section.

D.C. Law 16-305, in subsec. (c), substituted "has a total disability" for "becomes totally disabled".

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(k), (l) of Homestead Housing Preservation Temporary Amendment Act of 1998 (D.C. Law 12-245, April 20, 1999, law notification 46 DCR 4158).

Emergency legislation. — For temporary amendment of section, see § 2(k) and (l) of the Homestead Housing Preservation Emergency Amendment Act of 1998 (D.C. Act 12-556, January 12, 1999, 45 DCR 625).

For temporary (90-day) amendment of section, see § 2(f) of the Homestead Housing Preservation Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-62, May 10, 1999, 46 DCR 4454).

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 6-216. — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986,

respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-11. — For Law 13-11, see notes following § 42-2102.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to in subsection (a)(1), is D.C. Law 6-216.

§ 42-2109. Proposals to develop a Technical Training Program.

(a) The Mayor shall issue a RFP inviting organizations to submit proposals for the development and implementation of a Technical Training Program consistent with this chapter and rules promulgated pursuant to this chapter.

(b) The Technical Training Program shall contain, at minimum, the following training elements:

(1) Teaching individuals the legal rights and responsibilities of homeownership;

(2) Training individuals in financial management to assist them in meeting the financial responsibilities of homeownership;

(3) Providing individuals with technical skills that will permit them to identify and correct conditions that are unsafe or that may otherwise lead to deterioration of the property; and

(4) Providing individuals with such other skills and information as may be required by rule.

(Aug. 9, 1986, D.C. Law 6-135, § 10, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(g), 33 DCR 7836; Apr. 19, 2002, D.C. Law 14-114, § 801(i), 49 DCR 1468.)

Section references. — This section is referred to in §§ 42-2104 and 42-2108.

Prior Codifications. — 1981 Ed., § 45-2709.

Effect of amendments. — D.C. Law 14-114, in subsec. (a), substituted “Mayor” for “Administrator”; and, in subsec. (b)(1), deleted “of cooperative and other forms” before “of homeownership”.

Legislative history of Law 6-135. — For

legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

§ 42-2110. Appropriation; reports.

(a) There may be appropriated out of revenues available to the District sufficient funds to administer the Program. Beginning with the budget submission for Fiscal Year 1988, the Mayor shall include in the budget submission to the Council a statement of goals and objectives regarding the number of properties contemplated for inclusion in the Program in the upcoming fiscal year and a projection of the funds that would be necessary to permit transfer and repair of the property under the Program.

(b) Thirty days after the end of the 1st full calendar quarter after August 9, 1986, and 30 days after the end of each calendar quarter thereafter, the Mayor

shall submit to the Council a report on the progress in implementing the Program. The report shall include, but not be limited to, the following information:

- (1) The ward location, size, and assessed value of each property transferred under the Program;
- (2) A list of all properties remaining in the Program at the close of the quarter;
- (3) The individuals or organizations that were transferees under the Program and the sales price and other terms of transfers made under the Program during the preceding quarter; and
- (4) A description of assistance provided to transferees under the Program.

(Aug. 9, 1986, D.C. Law 6-135, § 11, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(h), 33 DCR 7836; Apr. 19, 2002, D.C. Law 14-114, § 801(j), 49 DCR 1468.)

Prior Codifications. — 1981 Ed., § 45-2710.

Effect of amendments. — D.C. Law 14-114 substituted “Mayor” for “Administrator” throughout section.

Legislative history of Law 6-135. — For legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-2103.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

§ 42-2111. Notice.

Pursuant to rules issued in accordance with § 42-2104, the Mayor shall give:

- (1) Reasonable advance notice to the record owners and affected parties of properties brought to tax sale in accordance with § 47-1205(b) and (c); and
- (2) Reasonable advance notice of properties scheduled to be sold and the date of sale by advertising the list of properties in a newspaper of general circulation published in the District of Columbia at least once every 2 weeks.

(Aug. 9, 1986, D.C. Law 6-135, § 12, 33 DCR 3771.)

Prior Codifications. — 1981 Ed., § 45-2711.

Legislative history of Law 6-135. — For

legislative history of D.C. Law 6-135, see Historical and Statutory Notes following § 42-2101.

CASE NOTES

In general.

Prior to disposing of property bid off by operation of law at tax sale, government must provide additional notice to record owner if the property is sold to satisfy tax lien or placed in the homestead program. D.C. Code 1981, §§ 45-

2701 et seq., 45-2711, 47-1304, 47-1312 to 47-1314. *District of Columbia v. Mayhew*, 601 A.2d 37, 1991 D.C. App. LEXIS 338 (1991), remanded by 672 A.2d 1075, 1996 D.C. App. LEXIS 31 (D.C. 1996).

CHAPTER 21A. AFFORDABLE HOUSING CLEARINGHOUSE DIRECTORY.

Sec.	Sec.
42-2131. Definitions.	data by affordable housing developments.
42-2132. Development of an Affordable Housing Inventory and an Affordable Housing Locator.	42-2135. Information on affordable housing developments.
42-2133. Agency submission of affordable housing data to the Mayor.	42-2136. List of affordable housing developments.
42-2134. Submission of affordable housing	

§ 42-2131. Definitions.

For the purposes of this chapter, the term:

(1) “Affordable housing development” means any structure or building in the District (whether existing, planned, or under construction) containing one or more affordable housing units and the land appurtenant thereto, including privately owned units, rental properties, public housing, cooperatives, and limited-equity cooperatives.

(2) “Affordable Housing Inventory” means a single, unified, searchable, and sortable database of all affordable housing developments that is maintained by the Mayor.

(3) “Affordable Housing Locator” means a list of affordable housing developments generated using data in the Affordable Housing Inventory that the Mayor provides to the public in an effort to assist low-income and moderate-income households locate available affordable housing.

(4) “Affordable housing unit” means a dwelling that is offered for rent or for sale for residential occupancy and is made available to, and affordable to, a household whose income is equal to, or less than, 120% of AMI, as a result of a federal or District subsidy.

(5) “AMI” means the periodic Area Median Income calculation provided by the United States Department of Housing and Urban Development as a direct calculation without taking into account any adjustments.

(6) “Household” means all the persons who would occupy an affordable housing unit, including a single family, one person living alone, 2 or more families living together, or any other group of related or unrelated persons who share living arrangements.

(Aug. 15, 2008, D.C. Law 17-215, § 2, 55 DCR 7494.)

Legislative history of Law 17-215. — Law 17-215, the “Affordable Housing Clearinghouse Directory Act of 2008”, was introduced in Council and assigned Bill No. 17-339 which was referred to Housing and Urban Affairs. The Bill was adopted on first and second readings on

May 6, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 24, 2008, it was assigned Act No. 17-415 and transmitted to both Houses of Congress for its review. D.C. Law 17-215 became effective on August 15, 2008.

§ 42-2132. Development of an Affordable Housing Inventory and an Affordable Housing Locator.

(a) To assist residents of the District in locating affordable housing units

within the District, the Mayor, or the Mayor's designee, shall develop and maintain the Affordable Housing Inventory.

(b)(1) The Mayor shall create the Affordable Housing Locator using the Affordable Housing Inventory.

(2) The Mayor shall make the Affordable Housing Locator available and accessible to the general public by all appropriate means, including the internet.

(c)(1) The Mayor shall provide copies of the Affordable Housing Locator to each of the following offices and entities:

(A) The Office of the Deputy Mayor for Planning and Economic Development;

(B) The Office of Planning;

(C) The District of Columbia Housing Authority;

(D) The District of Columbia Housing Finance Agency;

(E) The Department of Housing and Community Development; and

(F) The District of Columbia Public Library.

(2) The Mayor shall provide updated copies to the offices and entities listed in this subsection on a quarterly basis.

(Aug. 15, 2008, D.C. Law 17-215, § 3, 55 DCR 7494.)

Legislative history of Law 17-215. — For Law 17-215, see notes following § 42-2131.

§ 42-2133. Agency submission of affordable housing data to the Mayor.

(a) The Mayor shall require the following agencies to provide the information required by § 42-2135 to the Mayor, or the Mayor's designee:

(1) The Office of the Deputy Mayor for Planning and Economic Development;

(2) The Office of Planning;

(3) The Department of Human Services;

(4) The Department of Mental Health;

(5) The Office of Aging;

(6) The Office of Victims Services;

(7) The Department of Housing and Community Development;

(8) The District of Columbia Housing Finance Agency;

(9) The District of Columbia Housing Authority; and

(10) Any other District agency involved in the development, planning, provision of financing, subsidy, funding, or any form of financial assistance, facilitation, administration, compliance, monitoring, or oversight of housing requirements and programs that create or subsidize the operation of affordable housing units in the District of Columbia.

(b) With respect to affordable housing developments for which applications for financing, subsidy, funding, or any other form of financial assistance from the District of Columbia were processed and that are under construction on August 15, 2008, an agency subject to this chapter shall submit the report required by this section within 3 months of August 15, 2008.

(c)(1) With respect to affordable housing developments for which applications for financing, subsidy, funding, or any other form of financial assistance from the District of Columbia were processed and that are either completed and occupied or ready for occupancy on August 15, 2008, an agency subject to this chapter shall submit the report required by this section within 6 months of August 15, 2008.

(2) The agency shall review the information for accuracy and update it as appropriate not less than once every 12 months.

(d) An agency subject to this chapter shall submit the information required by this section to the Mayor on a quarterly basis after the initial submission required by this section.

(Aug. 15, 2008, D.C. Law 17-215, § 4, 55 DCR 7494.)

Legislative history of Law 17-215. — For Law 17-215, see notes following § 42-2131.

§ 42-2134. Submission of affordable housing data by affordable housing developments.

The Mayor shall include in the Affordable Housing Inventory an affordable housing development that does not receive financing, subsidy, funding, or some form of financial assistance from the District of Columbia or federal government to provide a unit of affordable housing, if the affordable housing development requests inclusion in the Affordable Housing Inventory and submits the information required by § 42-2135 to the Mayor, or the Mayor's designee, on a quarterly basis.

(Aug. 15, 2008, D.C. Law 17-215, § 5, 55 DCR 7494.)

Legislative history of Law 17-215. — For Law 17-215, see notes following § 42-2131.

§ 42-2135. Information on affordable housing developments.

(a) The Affordable Housing Inventory developed by the Mayor pursuant to § 42-2132 shall include the following information about any affordable housing development in the District of Columbia that is existing, planned, or under construction:

- (1) Name, address, and ward number;
- (2) Name and contact information of the owner;
- (3) Name and contact information of the property manager;
- (4) Name and contact information of the marketing manager;
- (5) Whether the affordable housing development is planned, under construction, or an existing property;
- (6) Name and contact information for the developer responsible for the construction of the affordable housing development;
- (7) Number of affordable housing units and number of market-rate units in the affordable housing development;

- (8) Number of affordable housing units by bedroom size;
 - (9) Percentage of units that are accessible to persons with disabilities;
 - (10)(A) Type of financial assistance, funding, or subsidy provided by the District of Columbia or the federal government;
 - (B) The name of the subsidy program;
 - (C) The amount and the type of financial assistance provided with respect to the affordable housing development or unit;
 - (D) Any income qualification and percentage of area median income restriction imposed by the program;
 - (E) The date upon which the program commenced and the date upon which the program expires;
 - (F) The start date and ending date of use restrictions (the earliest date upon which the affordable housing development can be sold without an affordable housing restriction);
 - (11) Where available, for properties subsidized through the U.S. Department of Housing and Urban Development, all scores received through an inspection conducted by the Real Estate Assessment Center;
 - (12) For properties that receive project-based funding under section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f), an indication of whether the owner has issued a notice of termination of the assistance and the date of the notice;
 - (13) For properties with a mortgage insured or held by the Secretary of the U.S. Department of Housing and Urban Development under sections 236(j)(1), 221(d)(3) BMIR, 241(f)/221-BMIR, or 241(f)/236 of the National Housing Act, approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. § 1701 et seq.), an indication of whether the owner has issued a notice of prepayment of the mortgage and the date of such notice;
 - (14) Any population specifically served by the affordable housing development, including elderly persons, persons with disabilities, and low-income individuals or families;
 - (15) Any affordable units created under the inclusionary zoning requirements; and
 - (16) All information required to be included in the Affordable Housing Locator pursuant to § 42-2136.
- (b) The Affordable Housing Inventory shall include a unique identification number for each affordable housing development.

(Aug. 15, 2008, D.C. Law 17-215, § 6, 55 DCR 7494.)

Legislative history of Law 17-215. — For Law 17-215, see notes following § 42-2131.

§ 42-2136. List of affordable housing developments.

- (a) The Affordable Housing Locator shall include the following information about any affordable housing development located in the District:
- (1) Name of the affordable housing development, where applicable;
 - (2) Address of the affordable housing development/unit, unless the owner or manager of the development requests that the address not be published to

protect the confidentiality of the residents, and provides reasonable grounds for the request, such as the residents are participants in an ex-offender, substance abuse, victims of abuse, or mental disability program;

(3) Population served by affordable housing development/unit, where specificity is appropriate, such as elderly, persons with disabilities, or family, unless the owner or manager of the development requests that the address not be published to protect the confidentiality of the residents, and provides reasonable grounds for the request, such as the residents are participants in an ex-offender, substance abuse, victims of abuse, or mental disability program;

(4) Any population specifically served by the affordable housing development, such as elderly persons, persons with disabilities, and low-income individuals or families;

(5) Type of affordable housing development/unit (i.e., single-family, multifamily, townhouse, rental, ownership, condominium, homeowner association, cooperative, limited equity cooperative);

(6) Name and contact information for the agent selling or renting the property;

(7) Rent charge or sale price, utilities paid by the tenant or owner, and underlying mortgage, condominium and cooperative fees, and other carrying charges, per affordable housing unit;

(8) Maximum percentage of AMI and income for which units would be affordable;

(9) Other subsidy or financial assistance program requirements for the affordable housing development, if any;

(10) Number of bedrooms in the affordable housing unit; and

(11) Whether there are affordable housing units in the development that are accessible for persons with disabilities.

(b) The Affordable Housing Locator shall display the information required by this chapter in various formats to allow the public the maximum flexibility in sorting through the information. The Affordable Housing Locator that is made available to the public by way of the internet shall be searchable and sortable by ward, target population, income limitation, affordable housing unit size, and rent or sales price.

(Aug. 15, 2008, D.C. Law 17-215, § 7, 55 DCR 7494.)

Legislative history of Law 17-215. — For Law 17-215, see notes following § 42-2131.

CHAPTER 22. SENIOR CITIZENS' HOME REPAIR AND IMPROVEMENT PROGRAM FUND.

Sec.
42-2201. Definitions.
42-2202. Establishment of Fund.
42-2203. Sources of monies for loans.
42-2204. Eligibility for loans.

Sec.
42-2205. Repayment of loans.
42-2206. Issuance of rules.
42-2207. Mayor's report to Council.

§ 42-2201. Definitions.

For the purposes of this chapter, the term:

- (1) "Council" means the Council of the District of Columbia.
- (2) "District" means the District of Columbia.
- (3) "Fund" means the Senior Citizens' Home Repair and Improvement Program Fund established by § 42-2202.
- (4) "Lower income" means a household within the Section 8 lower income guidelines established by the Secretary of the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437f.
- (5) "Mayor" means the Mayor of the District of Columbia.
- (6) "Principal place of residence" means a dwelling unit in which a person lives in a particular locality with the intent to make it a fixed and permanent home of the senior citizen.
- (7) "Senior citizen homeowner" means the owner resident of residential real property who is 60 years of age or older.

(Mar. 24, 1988, D.C. Law 7-96, § 2, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3001.

Legislative history of Law 7-96. — Law 7-96, the "Senior Citizens' Home Repair and Improvement Program Fund Act of 1987," was introduced in Council and assigned Bill No. 7-167, which was referred to the Committee on

Human Services. The Bill was adopted on first and second readings on December 8, 1987, and January 5, 1988, respectively. Signed by the Mayor on February 3, 1988, it was assigned Act No. 7-140 and transmitted to both Houses of Congress for its review.

§ 42-2202. Establishment of Fund.

(a) There is established in the District a revolving Senior Citizens' Home Repair and Improvement Program Fund to be administered by the Mayor for the purpose of providing loans up to \$5,000 to lower income senior citizen homeowners to enable them to make repairs and improvements to ensure health and safety in their principal places of residence.

(b) There may be appropriated out of the revenue of the District an amount necessary to carry out the purposes of this chapter.

(Mar. 24, 1988, D.C. Law 7-96, § 3, 35 DCR 891.)

Section references. — This section is referred to in § 42-2201.

Prior Codifications. — 1981 Ed., § 45-3002.

Legislative history of Law 7-96. — For legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

§ 42-2203. Sources of monies for loans.

The fund shall consist of, but not be limited to, monies from the following sources:

- (1) Appropriations pursuant to this chapter;
 - (2) Grants and gifts from public or private sources to the fund or to the District for the purposes of the fund;
 - (3) Repayments on principal and any interest on loans provided from the fund;
 - (4) Proceeds realized from the liquidation of any security interests held by the District under the terms of any assistance provided from the fund;
 - (5) Interest earned from the deposit or investment of monies of the fund;
 - (6) Monies appropriated for the fund by the United States government;
- and
- (7) All other revenues, receipts, and fees derived from the operation of the fund.

(Mar. 24, 1988, D.C. Law 7-96, § 4, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3003. legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

Legislative history of Law 7-96. — For

§ 42-2204. Eligibility for loans.

(a) An applicant is eligible for a loan if he or she is a senior citizen homeowner, is a resident of the District, and has resided in his or her principal place of residence for at least 3 years preceding the date of the application for assistance under this chapter. Lower income applicants shall be given priority consideration by the Mayor with respect to the issuance of loans.

(b) To determine the eligibility of an applicant, the Mayor shall develop an application form.

(c) In order to apply for a loan under this chapter, an applicant shall complete the application form and return it to the Mayor at the time and in the manner in which the Mayor shall prescribe.

(d) The Mayor shall verify the contents of the application form and determine whether the applicant meets the requirements for age, residency, and principal place of residence.

(Mar. 24, 1988, D.C. Law 7-96, § 5, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3004. legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

Legislative history of Law 7-96. — For

§ 42-2205. Repayment of loans.

(a) For each loan issued under this chapter, the Mayor shall arrange a repayment schedule for which the repayment shall not create an economic hardship on the senior citizen homeowner receiving the loan. Loan repayment may be deferred to avoid economic hardship.

(b) The loans granted under this chapter shall be recorded as a lien against the principal place of residence of the applicant.

(c) If the loan is not fully repaid prior to the death of the senior citizen homeowner who accepted a loan under this chapter, the District may collect the unsatisfied amount from the decedent's estate.

(Mar. 24, 1988, D.C. Law 7-96, § 6, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3005. legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

Legislative history of Law 7-96. — For

§ 42-2206. Issuance of rules.

Within 120 days of March 24, 1988, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 24, 1988, D.C. Law 7-96, § 7, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3006. legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

Legislative history of Law 7-96. — For

§ 42-2207. Mayor's report to Council.

The Mayor shall submit to the Council, not later than 6 months after the end of each fiscal year, a report on the financial condition of the fund and the results of the operation of the fund for the fiscal year.

(Mar. 24, 1988, D.C. Law 7-96, § 8, 35 DCR 891.)

Prior Codifications. — 1981 Ed., § 45-3007. legislative history of D.C. Law 7-96, see Historical and Statutory Notes following § 42-2201.

Legislative history of Law 7-96. — For

SUBTITLE V. HOUSING FINANCE AND ASSISTANCE.

CHAPTER 23. CREDIT LINE DEEDS OF TRUST.

Sec.

42-2301. Definitions.

42-2302. Notice requirements.

Sec.

42-2303. Priority of credit line deed of trust.

§ 42-2301. Definitions.

For the purposes of this chapter, the term:

(1) "Credit line deed of trust" means any deed of trust in which title to real property located in the District of Columbia is conveyed, transferred, encumbered, or pledged to secure repayment of money that is loaned in the form of periodic advances by the noteholder named in the credit line deed of trust.

(2) "Real property" has the meaning set forth in § 47-802(1).

(3) "Single family residential property" shall have the same meaning as the term has in § 47-803(6).

(Jan. 28, 1988, D.C. Law 7-67, § 2, 34 DCR 7441; Mar. 11, 1992, D.C. Law 9-72, § 2(a), 39 DCR 20.)

Prior Codifications. — 1981 Ed., § 45-2901.

Legislative history of Law 7-67. — Law 7-67, the "Real Property Credit Line Deed of Trust Act of 1987," was introduced in Council and assigned Bill No. 7-163, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 13, 1987, and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-100 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-72. — Law 9-72, the "District of Columbia Real Property Credit Line Deed of Trust Clarification Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-70, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-123 and transmitted to both Houses of Congress for its review.

§ 42-2302. Notice requirements.

(a) A credit line deed of trust shall include:

(1) On the front page, either in capital letters or underscored, the words "THIS IS A HOME EQUITY CREDIT LINE DEED OF TRUST. DEFAULT ON PAYMENTS MAY RESULT IN THE LOSS OF YOUR HOME.";

(2) Language to convey notice to all parties that the noteholder, the grantors, and other borrowers identified have an agreement whereby the noteholder may make or contemplates making advances from time to time against the security described in the credit line deed of trust;

(3) The maximum aggregate amount of principal to be secured at any 1 time; and

(4) An explicit statement of the rights and obligations of the borrower and the consequences of default.

(b) Failure to provide the notice required by subsection (a) of this section shall be deemed an unlawful trade practice punishable under Chapter 39 of Title 28.

(c) This section shall apply only to a credit line deed of trust for single family residential property.

(Jan. 28, 1988, D.C. Law 7-67, § 3, 34 DCR 7441; Mar. 11, 1992, D.C. Law 9-72, § 2(b), 39 DCR 20.)

Prior Codifications. — 1981 Ed., § 45-2902.

Legislative history of Law 7-67. — For legislative history of D.C. Law 7-67, see Historical and Statutory Notes following § 42-2301.

Legislative history of Law 9-72. — For legislative history of D.C. Law 9-72, see Historical and Statutory Notes following § 42-2301.

§ 42-2303. Priority of credit line deed of trust.

(a) From the date of the recording of a credit line deed of trust, the credit line deed of trust shall have priority:

(1) Over all other deeds, conveyances, or other instruments, or contracts in writing, that are unrecorded as of that date and of which the noteholder has no knowledge or notice; and

(2) Over judgment liens subsequently recorded, except that a judgment creditor who gives notice of the judgment to the noteholder of record at the address listed in the credit line deed of trust shall have priority over the credit line deed of trust in the case of advances that are made after the date of the noteholder's receipt of the notice and that were not irrevocably committed prior to this date.

(b) Mechanic's liens established pursuant to § 40-301.01, shall have priority over all advances made under a credit line deed of trust subsequent to the filing of a notice of mechanic's lien, but shall not have priority over advances made prior to the filing of a notice of mechanic's lien.

(c) Except as provided in subsections (a)(2) and (b) of this section, the priority of a credit line deed of trust shall extend to all advances made following the recordation of the credit line deed of trust. Amounts outstanding, together with interest, shall continue to have priority until paid or otherwise settled.

(d) Nothing in this chapter shall apply to the priority of purchase money security interests in goods and fixtures.

(Jan. 28, 1988, D.C. Law 7-67, § 4, 34 DCR 7441.)

Prior Codifications. — 1981 Ed., § 45-2903.

Legislative history of Law 7-67. — For

legislative history of D.C. Law 7-67, see Historical and Statutory Notes following § 42-2301.

CASE NOTES

In general.

Under District of Columbia, lender was not obligated to release second deed of trust lien on Chapter 11 debtor's residence upon payment of full amount owed from proceeds of loan secured by third lien deed of trust, and thus subsequent advance by lender had priority over third lien, where sums secured by deed of trust were

advances and readvances pursuant to revolving line of credit, and line of credit was not closed. D.C. Code 1981, § 45-2903. *Harris v. Maryland Nat'l Bank (In re Harris)*, 165 B.R. 729, 1994 Bankr. LEXIS 401 (1994), reversed by, remanded by 183 B.R. 657, 1995 U.S. Dist. LEXIS 8411, 7 4th Cir. & D.C. Bankr. Ct. Rep. 708 (D.D.C. 1995).

CHAPTER 24. DISBURSEMENT OF SETTLEMENT PROCEEDS.

Sec.

42-2401. Definitions.

42-2402. Applicability.

42-2403. Duties of lender.

42-2404. Duties of owners and brokers.

Sec.

42-2405. Duties of settlement agent.

42-2406. Validity of loan documents.

42-2407. Penalty.

§ 42-2401. Definitions.

For the purposes of this chapter, the term:

(1) "Disbursement of loan funds" means the delivery of loan funds by a lender to a settlement agent in the form of:

(A) Cash;

(B) Wired funds;

(C) Certified checks;

(D) Checks issued by the District of Columbia;

(E) Cashier's check or teller's check; or

(F) Checks drawn on a financial institution the accounts of which are insured by an agency of the federal, a state, or the District of Columbia government, and are located within the Fifth Federal Reserve District.

(2) "Disbursement of settlement proceeds" means the payment of all proceeds of a transaction by a settlement agent to the persons entitled to receive the proceeds.

(3) "Lender" means any person regularly engaged in making loans secured by mortgages or by deeds of trust on real estate.

(4) "Loan closing" means that time agreed upon by a borrower and a lender when the execution of the loan documents by the borrower occurs.

(5) "Loan documents" means a note evidencing a debt due a lender, a deed of trust or a mortgage securing a debt due a lender, and any other documents required by a lender to be executed by a borrower as part of a transaction.

(6) "Loan funds" means the gross or net proceeds of the loan to be disbursed by a lender at loan closing.

(7) "Parties" means a seller, a purchaser, a borrower, a lender, and a settlement agent.

(8) "Settlement" means the time when the settlement agent has received a duly executed deed, loan funds, loan documents, and other documents and certified funds required to carry out the terms of a contract between the parties, and the settlement agent can reasonably determine that prerecordation conditions of the contract have been satisfied.

(9) "Settlement agent" means a person responsible for conducting a settlement and disbursement of the settlement proceeds.

(Feb. 24, 1987, D.C. Law 6-187, § 2, 33 DCR 7681; Apr. 20, 1999, D.C. Law 12-261, § 1241, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-2801.

Legislative history of Law 6-187. — Law 6-187, the "Real Property Wet Settlement Act of

1986," was introduced in Council and assigned Bill No. 6-60, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on October 21, 1986, and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned Act No. 6-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which

was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 42-2402. Applicability.

This chapter applies only to transactions involving purchase money loans made by lenders that are secured by first or second deeds of trust or mortgages, excluding second deeds of trust or mortgages for refinancing purposes only, on real estate containing not more than 4 residential dwelling units.

(Feb. 24, 1987, D.C. Law 6-187, § 3, 33 DCR 7681.)

Prior Codifications. — 1981 Ed., § 45-2802.

Legislative history of Law 6-187. — For

legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-2401.

§ 42-2403. Duties of lender.

A lender shall, at or before loan closing, cause disbursement of loan funds to a settlement agent. A lender shall not receive or charge any interest on a loan until disbursement of loan funds and loan closing have occurred, and shall not require payment of any interest in advance. For purposes of this section, the term “interest” means any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money as defined in § 28-3311, except that for purposes of this section, the term “interest” shall not include any loan fee, origination fee, service and carrying charge, investigator’s fee, or point under § 28-3301(e).

(Feb. 24, 1987, D.C. Law 6-187, § 4, 33 DCR 7681.)

Prior Codifications. — 1981 Ed., § 45-2803.

Legislative history of Law 6-187. — For

legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-2401.

§ 42-2404. Duties of owners and brokers.

The owner and real estate broker shall have in place, at or before settlement, all documents, deeds, titles, recordation tax returns, certified checks, and any other monies needed for settlement so that disbursements can be made in a timely manner.

(Feb. 24, 1987, D.C. Law 6-187, § 5, 33 DCR 7681.)

Prior Codifications. — 1981 Ed., § 45-2804.

Legislative history of Law 6-187. — For

legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-2401.

§ 42-2405. Duties of settlement agent.

A settlement agent shall cause recordation of the deed, the deed of trust or mortgage, or other documents required to be recorded, and shall cause disbursement of settlement proceeds within 1 business day of settlement. At least 5 days prior to settlement, the settlement agent shall inform the seller of the terms of this chapter. If settlement is delayed, the settlement agent shall notify, in writing, all of the settlement parties explaining the reasons for the delay. If any of the reasons listed are the fault of a settlement agent or of the lender, the settlement agent or the lender at fault shall be subject to the provisions of § 42-2407.

(Feb. 24, 1987, D.C. Law 6-187, § 6, 33 DCR 7681.)

Prior Codifications. — 1981 Ed., § 45-2806. legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-2401.

Legislative history of Law 6-187. — For

§ 42-2406. Validity of loan documents.

Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

(Feb. 24, 1987, D.C. Law 6-187, § 7, 33 DCR 7681.)

Prior Codifications. — 1981 Ed., § 45-2806. legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-

Legislative history of Law 6-187. — For 2401.

§ 42-2407. Penalty.

(a) Any person suffering a loss due to the failure of a lender or of a settlement agent to cause disbursement as required by this chapter shall be entitled to recover, in addition to the amount of actual damages, double the amount of any interest collected in violation of this chapter, plus any reasonable attorneys' fees incurred in the collection of that amount.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Feb. 24, 1987, D.C. Law 6-187, § 8, 33 DCR 7681; Mar. 8, 1991, D.C. Law 8-237, § 15, 38 DCR 314.)

Section references. — This section is referred to in § 42-2405.

Prior Codifications. — 1981 Ed., § 45-2807.

Legislative history of Law 6-187. — For legislative history of D.C. Law 6-187, see Historical and Statutory Notes following § 42-2401.

Legislative history of Law 8-237. — Law

8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on

December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

CHAPTER 24A. FORECLOSURE RESCUE PROHIBITED.

Sec.

42-2431. Definitions.

42-2432. Prohibited foreclosure transactions and practices.

Sec.

42-2433. Fiduciary duties.

42-2434. Private actions.

42-2435. Criminal penalties.

§ 42-2431. Definitions.

For the purposes of this chapter, the term:

(1) “Foreclosure rescue service” means any good or service related to or promising assistance in connection with:

(A) Avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or

(B) Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

(2) “Foreclosure rescue transaction” means a transaction involving the transfer of title to real property, or an interest in the property, by a homeowner during or incident to a mortgage default, foreclosure, or tax sale proceeding, either by transfer of any interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process; provided, that the transaction includes the subsequent conveyance, the promise of a subsequent conveyance, or a right to a subsequent conveyance of an interest back to the homeowner from the acquirer or a person acting in participation with the acquirer, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, sale/leaseback, trust, or other contractual arrangement.

(Jan. 29, 2008, D.C. Law 17-87, § 2, 54 DCR 11913.)

Legislative history of Law 17-87. — Law 17-87, the “Home Equity Protection Act of 2007”, was introduced in Council and assigned Bill No. 17-101 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 27, 2007, it was assigned Act No. 17-205 and transmitted to both Houses of Congress for its review. D.C. Law 17-87 became effective on January 29, 2008.

§ 42-2432. Prohibited foreclosure transactions and practices.

(a) It shall be unlawful, for compensation or gain or for potential or contingent compensation or gain, whether at the time of the transaction or in the future, to engage in, arrange, offer, promote, promise, solicit participation in, or carry out a foreclosure rescue transaction in the District or concerning residential property in the District. Nothing in this subsection shall be interpreted to prohibit foreclosure rescue transactions that are not carried out for compensation or gain or for potential or contingent compensation or gain, including transactions engaged in between or among family members or arranged by a bona fide nonprofit community organization or nonprofit housing organization.

(b) It shall be unlawful to advertise, offer, or promote the availability of

foreclosure rescue transactions or services related to foreclosure rescue transactions.

(c) It shall be unlawful to advertise, offer, or promote foreclosure rescue services without disclosing, clearly and conspicuously, a precise description of the goods or services offered and how they will assist persons in avoiding or delaying foreclosure or curing or otherwise addressing a default or failure to timely pay a residential mortgage loan obligation.

(d) Nothing in this section shall be interpreted to prohibit the advertising of, offering of, promoting of, or engaging in foreclosure rescue transactions or foreclosure rescue services that are not carried out for compensation or gain or for potential or contingent compensation or gain, including transactions engaged in between or among family members or arranged by a bona fide nonprofit community organization or nonprofit housing organization.

(Jan. 29, 2008, D.C. Law 17-87, § 3, 54 DCR 11913.)

Legislative history of Law 17-87. — For Law 17-87, see notes following § 42-2431.

§ 42-2433. Fiduciary duties.

Any person who advertises, offers, promotes, or provides foreclosure rescue services to a homeowner owes a fiduciary duty to the homeowner and shall discharge that duty in accordance with all applicable laws.

(Jan. 29, 2008, D.C. Law 17-87, § 4, 54 DCR 11913.)

Legislative history of Law 17-87. — For Law 17-87, see notes following § 42-2431.

§ 42-2434. Private actions.

(a) In addition to any action by the Attorney General authorized under this chapter and any other action otherwise authorized by law, a homeowner may bring an action for damages incurred, or equitable relief, as the result of a practice prohibited by this chapter.

(b) A homeowner who brings an action under this chapter and who is awarded damages or equitable relief may also be awarded reasonable attorney's fees and costs.

(c) A violation of this chapter shall be a violation of Chapter 39 of Title 28 and all remedies of the chapter shall be available for such action. A private cause of action under the chapter is in the public interest.

(d) The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available.

(Jan. 29, 2008, D.C. Law 17-87, § 5, 54 DCR 11913.)

Legislative history of Law 17-87. — For Law 17-87, see notes following § 42-2431.

§ 42-2435. Criminal penalties.

(a) Any person who knowingly violates any provision of this chapter, or any rule promulgated pursuant to this chapter, shall be fined an amount not to exceed \$10,000, imprisoned for not more than one year, or both. All prosecutions of this subsection shall be instituted by the Attorney General for the District of Columbia or any of his or her assistants.

(b) A person who knowingly commits a 2nd or subsequent violation of any provision of this chapter, or any rule promulgated pursuant to this chapter, shall be fined an amount not to exceed \$50,000, imprisoned for not more than 5 years, or both.

(Jan. 29, 2008, D.C. Law 17-87, § 6, 54 DCR 11913.)

Legislative history of Law 17-87. — For Law 17-87, see notes following § 42-2431.

CHAPTER 25. GOVERNMENT EMPLOYER-ASSISTED HOUSING PROGRAM.

Sec.	Sec.
42-2501. Definitions.	42-2505. Deferred payment loan.
42-2502. Establishment.	42-2506. Assistance available for District government and public charter school employees.
42-2503. Eligibility.	42-2507. Rules.
42-2504. Employee savings; District government contribution.	

§ 42-2501. Definitions.

For the purposes of this chapter, the term:

- (1) "Agency" means the District of Columbia Housing Finance Agency.
- (2) "Agreement" means the housing allowance agreement required, pursuant to § 42-2504, to be entered into between a Participant and the District of Columbia government.
- (3) "Deferred payment loan" means funds made available to Participants in the Program by the District to assist with the purchase of housing units and for which payment of the principal is deferred until the property is sold, transferred, or otherwise ceases to be the principal residence of the Participant.
- (4) "Department" means the District of Columbia Department of Housing and Community Development.
- (5) "First-time homebuyer" means a purchaser who has no ownership interest in a principal residence at any time during the 3-year period ending on the date of the application for assistance, but includes an applicant who has divorced or separated during the 3-year period where a formal settlement did not convey an ownership interest in a principal residence which had been jointly owned.
- (6) "Household" means all of the persons living in a housing unit.
- (7) "Housing unit" means any room or group of rooms forming a single-family residential unit, including a semi-detached condominium, cooperative, or semi-detached or detached home that is used or intended to be used for living, sleeping, and the preparation and eating of meals by human occupants.
- (8) "Matching contribution" means those funds made available to Participants in the Program by the District to assist the Participants in saving toward a down payment.
- (9) "Participant" means a person who has applied to the Program and who has met the eligibility requirements set forth in § 42-2503.
- (10) "Program" means the District of Columbia Government Employer-Assisted Housing Program established pursuant to § 42-2502.

(May 9, 2000, D.C. Law 13-96, § 2, 47 DCR 1081.)

Emergency legislation. — For temporary (90-day) addition of section, see § 2 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 2 of the Government Employer-Assisted Housing Legislative Review Emergency

Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 13-96. — Law 13-96, the "Government Employer-Assisted Housing Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-451, which was referred to the Committee on Economic Development. The Bill was adopted on

first and second readings on November 15, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-225 and transmitted to both Houses of Congress for its review. D.C. Law 13-96 became effective on May 9, 2000.

Editor's notes. — Section 11 of D.C. Law 13-96 provided: "This act shall apply as of October 1, 1997."

§ 42-2502. Establishment.

There is established within the District of Columbia Department of Housing and Community Development a District of Columbia Government Employer-Assisted Housing Program to assist District of Columbia government employees to become homeowners in the District. The Program shall include:

- (1) A District contribution toward a down payment;
- (2) A deferred payment loan of up to \$10,000; and
- (3) Agency single-family mortgage financing for qualified applicants.

(May 9, 2000, D.C. Law 13-96, § 3, 47 DCR 1081; Mar. 3, 2010, D.C. Law 18-111, § 7011, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 substituted "There" for "Subject to availability of funds, there".

Emergency legislation. — For temporary (90-day) addition of section, see § 3 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 3 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

For temporary (90 day) amendment of section, see § 7011 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

§ 42-2503. Eligibility.

(a) An applicant shall be eligible for the Program if the applicant is:

(1) A District of Columbia government employee, an employee of a District of Columbia public charter school, or a person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or a teacher at a District of Columbia public charter school; and

(2) A first-time homebuyer in the District.

(b) No more than one member of a household shall be eligible for the Program.

(c) The Mayor shall not limit the eligibility of an applicant to participate in the Program based on the length of employment of the applicant or the length of time that the applicant has resided in the District of Columbia if the applicant is a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or a teacher at a District of Columbia public charter school; provided, that the Mayor may limit the eligibility of an applicant to receive a District of Columbia contribution toward a down payment based on the length of employment of the applicant with the District

of Columbia or a District of Columbia public charter school or the length of time the applicant has resided in the District of Columbia. The Mayor shall not limit the eligibility of an applicant to participate in the Program based on the place of residence of the applicant at the time of his or her application. A rule, or a portion of a rule, inconsistent with this subsection shall be void.

(May 9, 2000, D.C. Law 13-96, § 4, 47 DCR 1081; Apr. 3, 2001, D.C. Law 13-236, § 2, 48 DCR 595; Apr. 24, 2004, D.C. Law 15-152, § 2, 50 DCR 9827.)

Effect of amendments. — D.C. Law 13-236 rewrote subsec. (a)(1) and added subsec. (c). Prior to amendment, subsec. (a)(1) read:

“(1) A District government employee; and”

D.C. Law 15-152, in subsecs. (a)(1) and (c), inserted “emergency medical technician,” after “firefighter.”

Emergency legislation. — For temporary (90-day) addition of section, see § 4 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 4 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Legislative history of Law 13-236. — Law 13-236, the “Government Employer-Assisted Housing Program Teacher, Police Officer, and Firefighter Hiring Incentive Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-629, which was referred to the Committee on Education, Libraries, and Recreation. The Bill was adopted on first and second readings on November 8, 2000, and December

5, 2000, respectively. Signed by the Mayor on December 26, 2000, it was assigned Act No. 13-513 and transmitted to both Houses of Congress for its review. D.C.3 Law 13-236 became effective on April 3, 2001.

Legislative history of Law 15-152. — Law 15-152, the “Government Employer-Assisted Housing Program Teacher, Police Officer, Firefighter, and Emergency Medical Technician Incentive Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-130, which was referred to Committee on Economic Development. The Bill was adopted on first and second readings on July 8, 2003, and October 7, 2004, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-199 and transmitted to both Houses of Congress for its review. D.C. Law 15-152 became effective on April 24, 2004.

Editor’s notes. — Section 3 of D.C. Law 13-236 provided: “The Mayor shall, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 issue rules within 90 days of the effective date of the Government Employer-Assisted Housing Program Teacher, Police Officer, and Firefighter Hiring Incentive Amendment Act of 2000 (‘Act’) to implement the Act.”

§ 42-2504. Employee savings; District government contribution.

(a) Each Participant in the Program shall be required to save an agreed upon amount, as set forth in this section, which shall be applied toward the down payment and closing costs for the housing unit. Each Participant shall enter into an Agreement with the Department. The Agreement shall set forth the following items:

(1) The amount to be saved by the employee and the period of time during which the savings shall be accomplished;

(2) A provision for amendment or termination of the Agreement;

(3) A penalty for withdrawal of funds or termination of the Agreement prior to settlement of the loan;

(4) A procedure for refund to the District of the amount of matching funds contributed by the District on behalf of a Participant who has withdrawn from the Agreement, terminated the Agreement, or otherwise failed to purchase the housing unit;

(5) The matching funds to be contributed by the District;
 (6) The requirement that the matching funds provided by the District shall be used only for the purchase of a housing unit that shall be the principal residence of the Participant; and

(7) Any other item that the Department deems necessary.

(b) For each Participant in the Program who sets aside \$2,500 under an Agreement, the District shall obligate \$500 in the financial management system. The District shall match succeeding Participant saving increments of \$2,500 with a \$500 obligation until the District obligation totals \$1,500. Matching contributions by the District shall not exceed \$1,500 for any individual Participant. The District shall disburse its cash contribution at the time of settlement.

(c) The Mayor shall establish a procedure to allow a Participant in the Program to save the target amount of money listed in the Agreement through a system of payroll deduction.

(d) An applicant who has saved toward a down payment prior to entering the Program shall also be eligible for the matching contribution upon entering into an Agreement with the Department.

(May 9, 2000, D.C. Law 13-96, § 5, 47 DCR 1081.)

Emergency legislation. — For temporary (90-day) addition of section, see § 5 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section,

see § 5 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

§ 42-2505. Deferred payment loan.

(a) In addition to the assistance provided in § 42-2504(b), the Department shall make available to each Participant a deferred loan of up to \$10,000 to provide financial assistance for the purchase of a housing unit. The deferred payment loan shall be available only if the housing unit shall be the principal residence of the Participant.

(b) Payment of the principal may be deferred until the property is sold, transferred, or ceases to be the principal residence of the Participant.

(c) Deferred payment loans may be secured by a second deed of trust on the subject property.

(d) The deferred payment loan may be used in conjunction with the Home Purchase Assistance Program established by Chapter 26 of this title.

(e) The Department may charge interest on the loan if the housing unit is sold within 5 years.

(May 9, 2000, D.C. Law 13-96, § 6, 47 DCR 1081; Mar. 2, 2007, D.C. Law 16-192, § 2012(a), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192, in subsec. (d), substituted “may” for “may not”.

Emergency legislation. — For temporary

(90-day) addition of section, see § 6 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 6 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

For temporary (90 day) amendment of section, see § 2012(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2012(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2012(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Short title. — Short title: Section 2011 of D.C. Law 16-192 provided that subtitle B of title II of the act may be cited as the “Government Employer-Assisted Housing Program Amendment Act of 2006”.

§ 42-2506. Assistance available for District government and public charter school employees.

(a) In addition to the assistance provided in §§ 42-2504 and 42-2505, a District of Columbia government employee, an employee of a District of Columbia public charter school, or a person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or a teacher at a District of Columbia public charter school who is a first-time homebuyer in the District shall be eligible for the following assistance, subject to annual available appropriations:

(1) A sliding-scale property tax credit as follows:

- (A) An 80% property tax credit for the first year;
- (B) A 60% property tax credit for the second year;
- (C) A 40% property tax credit for the third year;
- (D) A 20% property tax credit for the fourth year; and
- (E) A 20% property tax credit for the fifth year.

(2) A \$2,000 income tax credit in the tax year the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia public charter school purchases the housing unit and each of the 4 immediately succeeding tax years; provided, that the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia remains eligible for the tax credit. The credit shall not be prorated and any portion of the credit that is not utilized in a tax year shall not be carried forward, carried back, or refunded to the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia.

(b) Any real property owner eligible to receive a real property tax credit under this section shall receive the tax credit as of the next half of the real property tax year following the date the real property owner applied for the credit. The real property owner shall continue to receive the real property tax

credit for each succeeding 9 halves of the real property tax year; provided, that the real property owner remains eligible to receive the tax credit.

(May 9, 2000, D.C. Law 13-96, § 7, 47 DCR 1081; Mar. 2, 2007, D.C. Law 16-192, § 2012(b), 53 DCR 6899; Mar. 3, 2010, D.C. Law 18-111, § 7038(a), 57 DCR 181.)

Effect of amendments. — D.C. Law 16-192, in the section heading, substituted “District government and public charter school employees” for “Metropolitan police officers”; rewrote the lead-in language of subsec. (a), which had previously read: “In addition to the assistance provided in §§ 42-2504 and 42-2505, Metropolitan police officers who are first-time homebuyers in the District shall be eligible for the following assistance.”; and rewrote subsec. (a)(2), which had previously read:

“(2) A \$2,000 income tax credit in the tax year the officer purchases the housing unit and each of the 4 immediately succeeding tax years; provided, that the officer remains eligible for the tax credit. The credit shall not be prorated and any portion of the credit that is not utilized in a tax year shall not be carried forward, carried back, or refunded to the officer.”

D.C. Law 18-111, in subsec. (a), substituted “following assistance, subject to annual available appropriations:” for “following assistance.”

Emergency legislation. — For temporary (90-day) addition of section, see § 7 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 7 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

For temporary (90 day) amendment of section, see § 2012(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2012(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2012(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 7038 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7038 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Editor's notes. — Section 7038(b) of D.C. Law 18-111 provided: “(b) This section shall apply as of October 1, 2009.”

§ 42-2507. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules within 90 days after the effective date of this chapter to implement the provisions of this chapter.

(b) The rules shall include the following:

- (1) An application procedure for the Program;
- (2) A standard for eligibility and selection of applicants; and
- (3) The conditions under which the deferred payment loan may be granted.

(c) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(May 9, 2000, D.C. Law 13-96, § 8, 47 DCR 1081.)

Emergency legislation. — For temporary (90-day) addition of section, see § 8 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 8 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Resolutions. — Resolution 14-578, the “Government Employer-Assisted Housing Program Teacher, Police Officer, and Firefighter Hiring Incentive Regulations Approval Resolution of 2002”, was approved effective October 18, 2002.

CHAPTER 26. HOME PURCHASE ASSISTANCE FUND.

Subchapter I. General Provisions

Subchapter II. Step Up Program

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- 42-2602. Deposits to credit of Fund.
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Sec.

- 42-2621. Definitions.
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Subchapter I. General Provisions.

§ 42-2601. Establishment; purpose; unexpended balance.

There is hereby established in the District of Columbia and there is authorized, and accounted for in the General Fund as a separate revenue source allocable to provide financial assistance to low and moderate income persons, and District of Columbia Government employees participating in the District of Columbia Employer-Assisted Housing Program, and families seeking to purchase homes in the District of Columbia, for the purposes of enabling them to purchase decent, safe, and sanitary homes in the District of Columbia. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Mayor.

(Sept. 12, 1978, D.C. Law 2-103, § 2, 25 DCR 1977; June 14, 1980, D.C. Law 3-70, § 7(1), 27 DCR 1776; Oct. 24, 1981, D.C. Law 4-44, § 2(b), 28 DCR 4265; Sept. 23, 1986, D.C. Law 6-151, § 2(a), 33 DCR 4783; June 11, 1992, D.C. Law 9-118, § 8(a), 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-259, § 2(a), 46 DCR 1316; May 9, 2000, D.C. Law 13-96, § 9(a), 47 DCR 1081.)

Prior Codifications. — 1981 Ed., § 45-2201.

1973 Ed., § 45-1801.

Effect of amendments. — D.C. Law 13-96 inserted “the District of Columbia Government employees participating in the District of Columbia Employer-Assisted Housing Program” following “low and moderate income persons.”

Section 11 of D.C. Law 13-96 provided: “This act shall apply as of October 1, 1997.”

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(a) of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) amendment of section, see § 9(a) of the Government Employer-Assisted Housing Legislative Review Emer-

gency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 2-103. — Law 2-103, the “Home Purchase Assistance Fund Act of 1978,” was introduced in Council and assigned Bill No. 2-316, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978, and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-214 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70, the “District of Columbia Fund Accounting Act of 1980,” was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill

was adopted on first and second readings on March 18, 1980, and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-44. — Law 4-44, the “Home Purchase and First Right Assistance Fund Act Amendments Act of 1981,” was introduced in Council and assigned Bill No. 4-170, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-79 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-151. — Law 6-151, the “Home Purchase Assistance Fund Act Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-395, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 24, 1986, and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-193 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-118. — Law 9-118, the “District of Columbia Government Employer-Assisted Housing Act of 1992,” was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for its review. D.C. Law 9-118 became effective on June 11, 1992.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1997” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-259. — Law 12-259, the “Home Purchase Assistance Fund Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-617, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-611 and transmitted to both Houses of Congress for its review. D.C. Law 12-259 became effective on April 20, 1999.

Legislative history of Law 13-96. — Law 13-96, the “Government Employer-Assisted Housing Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-451, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 15, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-225 and transmitted to both Houses of Congress for its review. D.C. Law 13-96 became effective on May 9, 2000.

Repeal of Law 9-118. — Section 1101 of D.C. Law 12-60 repealed the District of Columbia Employer-Assisted Housing Act of 1992, D.C. Law 9-118.

§ 42-2602. Deposits to credit of Fund.

There shall be deposited to the credit of the Fund such amounts as may be appropriated pursuant to this subchapter; grants and gifts from public and private sources to the Fund or to the District of Columbia for the purposes of the Fund; repayments of principal and any interest on loans provided from the Fund; proceeds realized from the liquidation of any security interests held by the District of Columbia under the terms of any assistance provided from the Fund; interest earned from the deposit or investment of monies of the Fund; repayments of principal and any interest on loans provided under the District of Columbia Government Employer-Assisted Housing Program; and all other revenues, receipts and fees of whatever nature derived from the operation of the Fund.

(Sept. 12, 1978, D.C. Law 2-103, § 3, 25 DCR 1977; June 11, 1992, D.C. Law 9-118, § 8(b), 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378; May 9, 2000, D.C. Law 13-96, § 9(b), 47 DCR 1081.)

Prior Codifications. — 1981 Ed., § 45-2202.

1973 Ed., § 45-1802.

Effect of amendments. — D.C. Law 13-96 inserted “repayments of principal and any interest on loans provided under the District of Columbia Government Employer-Assisted Housing Program,” following “interest earned from the deposit or investment of monies of the Fund.”

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(b) of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) amendment of section, see § 9(b) of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 2-103. — For legislative history of D.C. Law 2-103, see His-

torical and Statutory Notes following § 42-2601.

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Repeal of Law 9-118. — Section 1101 of D.C. Law 12-60 repealed the District of Columbia Employer-Assisted Housing Act of 1992, D.C. Law 9-118.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-266, “subchapter” has been substituted for “chapter”.

Section 11 of D.C. Law 13-96 provided: “This act shall apply as of October 1, 1997.”

§ 42-2603. Availability; use prescribed by Mayor.

The Fund shall be available without fiscal year limitation for the purpose of providing financial assistance for down payments or interim financing to recipients for the purpose of purchasing or securing housing, including single family homes, condominium units, or occupancy rights to cooperative housing in the District of Columbia as their principal place of residence and of providing financial assistance to District of Columbia government employees eligible under the District of Columbia Employer-Assisted Housing Program to purchase a home in the District of Columbia. Under terms and conditions prescribed by the Mayor of the District of Columbia (“Mayor”), the Fund shall be used for making loans and providing other forms of financial assistance. The assistance provided pursuant to the Fund may be used in conjunction with other available home assistance programs.

(Sept. 12, 1978, D.C. Law 2-103, § 4, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(c), 28 DCR 4265; June 11, 1992, D.C. Law 9-118, § 8(c), 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378; May 9, 2000, D.C. Law 13-96, § 9(c), 47 DCR 1081.)

Prior Codifications. — 1981 Ed., § 45-2203.

1973 Ed., § 45-1803.

Effect of amendments. — D.C. Law 13-96 rewrote the first sentence which formerly provided: “The Fund shall be available without fiscal year limitation for the purpose of providing financial assistance for down payments or interim financing to recipients for the purpose of purchasing or securing housing, including single family homes, condominium units, or occupancy rights to cooperative housing in the District of Columbia as their principal place of residence and of providing financial assistance

to District of Columbia government employees eligible under the District of Columbia Employer-Assisted Housing Program to purchase a home in the District of Columbia.”

Emergency legislation. — For temporary (90-day) amendment of section, see § 9(c) of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) amendment of section, see § 9(c) of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 2-103. — For legislative history of D.C. Law 2-103, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 4-44. — For legislative history of D.C. Law 4-44, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 12-60. — For

legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 13-96. — For Law 13-96, see notes following § 42-2601.

Repeal of Law 9-118. — Section 1101 of D.C. Law 12-60 repealed the District of Columbia Employer-Assisted Housing Act of 1992, D.C. Law 9-118.

Editor's notes. — Section 11 of D.C. Law 13-96 provided: "This act shall apply as of October 1, 1997."

§ 42-2604. Promulgation of rules and regulations by Mayor; review by Council; contents of loan agreements.

(a) The Mayor is authorized to promulgate rules and regulations to govern the operation of the Fund, including but not limited to, rules and regulations establishing standards for determining the eligibility and selection of applicants; procedures for applying for assistance and for notifying applicants (including the development of appropriate forms); and criteria for determining the terms and conditions under which loans or other forms of financial assistance may be made from the Fund which, among things, shall reflect the ability of the recipient to pay and may provide for the deferred payment or forgiveness of loans. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this subchapter shall be submitted by the Mayor to the Council of the District of Columbia for a 45 calendar day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the 45 calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period, the Council does not adopt a resolution disapproving such rules and regulations in whole or in part.

(b) Any loan agreement entered into pursuant to such rules and regulations shall provide that:

(1) All applicants for and recipients of financial assistance from the Funds shall be tenant organizations (as defined in § 42-3401.03(18) or a first time homebuyer seeking to purchase housing in the District of Columbia as a primary residence including, but not limited to, single family homes, condominium units, or occupancy rights to cooperative housing. For the purposes of this section, the term "first time homebuyer" means a real property purchaser who had no ownership interest in his or her principal residence at any time during the 3 year period ending on the date of his or her application for assistance, but including an applicant who has divorced or separated during the 3 year period where a formal settlement has been made under which the applicant does not receive an ownership interest in a primary residence which had been jointly owned, and who has no other current ownership interest in residential real property.

(1A) Priority in the allocation of assistance under the Fund shall be given to residents of the District of Columbia and District of Columbia residents who are low income, elderly, displaced applicants, or residents with disabilities.

(2) If the home purchased ceases to be the primary residence of the recipient of financial assistance from the Fund, the payments to such Fund by the recipient shall be accelerated on terms and conditions prescribed by the Mayor; provided, that such obligation shall not be inconsistent with the applicable law or regulations of any federal home purchase assistance program made available to the recipient.

(3) Repealed.

(Sept. 12, 1978, D.C. Law 2-103, § 5, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(d), 28 DCR 4265; Sept. 23, 1986, D.C. Law 6-151, § 2(b), 33 DCR 4783; Apr. 20, 1999, D.C. Law 12-259, § 2(b), 46 DCR 1316; Apr. 24, 2007, D.C. Law 16-305, § 61, 53 DCR 6198.)

Cross references. — Lower income homeownership households, qualifications, see § 47-3502.

Prior Codifications. — 1981 Ed., § 45-2204.

1973 Ed., § 45-1804.

Effect of amendments. — D.C. Law 16-305, in subsec. (b)(1A), substituted “displaced applicants, or residents with disabilities” for “handicapped, disabled, or displaced applicants”.

Legislative history of Law 2-103. — For legislative history of D.C. Law 2-103, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 4-44. — For legislative history of D.C. Law 4-44, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 6-151. — For legislative history of D.C. Law 6-151, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 12-259. — For legislative history of D.C. Law 12-259, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Resolutions. — Resolution 16-651, the “Home Purchase Assistance Program Approval Resolution of 2006”, was approved effective May 29, 2006.

Editor’s notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-266, “subchapter” has been substituted for “chapter” in the second sentence of (a).

Home Purchase Assistance Program Loan Repayment Resolution of 1998: Pursuant to Resolution 12-(PR)12-890, effective October 7, 1998, the Council approved the amendment of Chapter 25 of the Home Purchase Assistance Program Regulations to authorize the use of loan repayment funds to pay reasonable administrative costs associated with making loans.

CASE NOTES

In general.

Claimant, who sought review of decision by Department of Housing and Community Development not to award her housing loan under home purchase assistance program, did not have property interest sufficient to require administrative trial-type hearing where she failed

to show why, if she was entitled to hearing, it would be trial type hearing and not some lesser process; thus, claimant was not entitled to “contested case” review in court. *Rones v. District of Columbia Dep’t of Housing & Community Dev.*, 500 A.2d 998, 1985 D.C. App. LEXIS 574 (1985).

§ 42-2605. Annual audit; report to Congress and Council; appropriations.

(a) An annual audit of the operations of the Fund shall be conducted by the Office of the Inspector General of the District of Columbia.

(b) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Congress of the United States and to the Council of the District of Columbia a report of the financial condition of the Fund and the results of the operations for such fiscal year.

(c) The Mayor shall include in the budget estimates of the District of

Columbia for each fiscal year, and there is authorized to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be required for the Fund.

(Sept. 12, 1978, D.C. Law 2-103, § 6, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(e), 28 DCR 4265.)

Prior Codifications. — 1981 Ed., § 45-2205.

1973 Ed., § 45-1805.

Legislative history of Law 2-103. — For legislative history of D.C. Law 2-103, see Historical and Statutory Notes following § 42-2601.

Legislative history of Law 4-44. — For legislative history of D.C. Law 4-44, see Historical and Statutory Notes following § 42-2601.

Mayor's Orders. — Office of Internal Audits and Inspections abolished: The District of Columbia Office of Internal Audits and Inspections was replaced by Mayor's Order 79-7, dated January 2, 1979, and Mayor's Order 79-224, dated September 24, 1979, which Orders established the Office of the Inspection General of the District of Columbia.

Subchapter II. Step Up Program.

§ 42-2621. Definitions.

For the purpose of this subchapter, the term:

(1) "Closing Costs" means expenses in addition to the purchase price of the property which must be paid by the purchaser or deducted from the proceeds of the sale to the seller at time of closing.

(2) "Department" means the Department of Housing and Community Development.

(3) "Downpayment" means the unamortized amount paid by the purchaser at closing, which when added to the mortgage amount equals the total sale price.

(4) "Earnest money contract" means a contract created between the buyer and seller when the buyer makes a deposit to indicate both the ability and good faith intention to complete the purchase of a property. If the contract is fulfilled, then the earnest money deposit is applied toward the purchase price.

(5) "Fund" means the Home Purchase Assistance Step Up Fund.

(6) "Household" means an individual or 2 or more persons who reside together in a housing unit in the District.

(7) "Single family home" means a housing unit designed and maintained for occupancy by only one family.

(Apr. 27, 1999, D.C. Law 12-266, § 2, 46 DCR 948.)

Prior Codifications. — 1981 Ed., § 45-2211.

Legislative history of Law 12-266. — Law 12-266, the "Home Purchase Assistance Step Up Fund Act of 1998," was introduced in Council and assigned Bill No. 12-661, which was referred to the Committee on Economic Development.

The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-574 and transmitted to both Houses of Congress for its review. D.C. Law 12-266 became effective on April 27, 1999.

§ 42-2622. Establishment; funding; annual audit.

(a) There is established in the Department of Housing and Community Development, a Home Purchase Assistance Step Up Program to provide one-time housing assistance to residents of the District of Columbia in low- to moderate-income households, who own condominiums, cooperatives, or starter homes and seek to purchase single family housing in the District of Columbia that is larger, or otherwise more appropriate for their households.

(b) There is authorized to be appropriated from the general revenues of the District of Columbia, and accounted for in the General Fund as a separate revenue source, such amounts as may be needed to establish a permanent revolving fund to be known as the Home Purchase Assistance Step Up Fund. From this Fund the District shall provide financial assistance to residents of the District of Columbia in low- to moderate-income households, who own condominiums, cooperatives, or starter homes and seek to purchase single family housing in the District of Columbia.

(c) There shall be deposited to the credit of the Fund any amounts as may be appropriated pursuant to this subchapter; any grants and gifts from public and private sources to the Fund or to the District of Columbia government for the purposes of the Fund; repayments of principal and any interest on loans provided from the Fund; any proceeds realized from the liquidation of any security interests held by the District under the terms of any assistance provided from the Fund; any interest earned from the deposit or investment of monies of the Fund; and all other revenues, receipts, penalties, and fees of whatever nature derived from the operation of the Fund.

(d) The Fund shall be available, without fiscal limitation, to provide financial assistance for down payments or closing costs to recipients for the purpose of purchasing a single family residence that is larger or otherwise more appropriate than the home previously owned by the recipient. Such financial assistance may be used in conjunction with other available home purchase assistance programs.

(e) An annual audit of the operations of the Fund shall be conducted by the Office of the Inspector General of the District of Columbia. Not later than 6 months after the end of the fiscal year, the Mayor shall submit to the Congress and to the Council of the District of Columbia a report on the financial condition of the Fund and the results of the operations for such fiscal year.

(Apr. 27, 1999, D.C. Law 12-266, § 3, 46 DCR 948.)

Prior Codifications. — 1981 Ed., § 45-2212.

legislative history of D.C. Law 12-266, see Historical and Statutory Notes following § 42-2621.

Legislative history of Law 12-266. — For

§ 42-2623. Eligibility.

(a) An applicant shall be eligible for the Home Purchase Assistance Step Up Program if the applicant:

- (1) Is a District of Columbia resident;

(2) Is the head of the household and will occupy the property to be purchased with assistance from the program as his or her primary residence;

(3) Has a satisfactory credit rating as shall be defined by rules deemed necessary to carry out the purposes of this subchapter;

(4) Has adequate income to qualify for a mortgage from a private lender;

(5) Has sold or otherwise disposed of all interests in any other real property before the closing of any loan under this subchapter;

(6) Has insufficient assets to pay the down payment or reasonable closing costs, or both, without assistance from this program;

(7) Would have liquid assets not exceeding the limit established by the Mayor by rulemaking, after purchasing property under this subchapter or through this program; and

(8) Meets qualifying income levels as provided by regulation.

(b) Property shall be eligible for the Home Purchase Assistance Step Up Program if the property:

(1) Is an existing single family residence in the District of Columbia;

(2) Meets the requirements of the Construction Codes promulgated pursuant to the Construction Codes Approval and Amendments Act of 1980, effective February 2, 1987 (D.C. Law 6-216; 12 DCMR) and the Housing Regulations of the District of Columbia, effective August 11, 1955 (C.O. 55-1503; 14 DCMR Chapters 1-14); and

(3) Has a purchase price that neither exceeds the maximum price requirement established by rulemaking nor the appraised value of the property.

(Apr. 27, 1999, D.C. Law 12-266, § 4, 46 DCR 948.)

Prior Codifications. — 1981 Ed., § 45-2213.

Legislative history of Law 12-266. — For

legislative history of D.C. Law 12-266, see Historical and Statutory Notes following § 42-2621.

§ 42-2624. Assistance.

(a) Assistance available pursuant to this subchapter is limited to a one-time loan of up to \$15,000 with a maximum 20-year amortized term.

(b) The interest rate shall be 3%, unless otherwise provided by the Mayor by rulemaking.

(c) The Mayor shall establish underwriting guidelines, including loan amounts and repayment terms, by rulemaking.

(Apr. 27, 1999, D.C. Law 12-266, § 5, 46 DCR 948; Apr. 12, 2000, D.C. Law 13-91, § 155, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 45-2214.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (a).

Legislative history of Law 12-266. — For legislative history of D.C. Law 12-266, see Historical and Statutory Notes following § 42-2621.

Legislative history of Law 13-91. — Law

13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 42-2625. Rulemaking.

The Mayor is authorized to promulgate rules to govern the operation of the Fund, including but not limited to, rules establishing eligibility requirements for applicants and homes and for establishing operating procedures for the program. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(Apr. 27, 1999, D.C. Law 12-266, § 6, 46 DCR 948.)

Prior Codifications. — 1981 Ed., § 45-2215. legislative history of D.C. Law 12-266, see Historical and Statutory Notes following § 42-2621.

Legislative history of Law 12-266. — For

§ 42-2626. Applicability.

The provisions of this subchapter shall apply to the purchase of a single family home for which an earnest money contract is dated after April 1, 1999.

(Apr. 27, 1999, D.C. Law 12-266, § 7, 46 DCR 948.)

Prior Codifications. — 1981 Ed., § 45-2216. legislative history of D.C. Law 12-266, see Historical and Statutory Notes following § 42-2621.

Legislative history of Law 12-266. — For

CHAPTER 26A. HOMEOWNERSHIP COUNSELING.

Sec.

42-2651. Creation.

§ 42-2651. Creation.

(a) The Mayor shall establish within the District government, or cause to be provided through one or more non-government entities pursuant to a contract or contracts with the District of Columbia, a Homeownership Counseling Program ("Program"). The Program shall provide:

(1) Information concerning credit ratings, credit management, and credit counseling;

(2) Warnings regarding predatory lending practices;

(3) Information on how to purchase a home;

(4) Information concerning financial resources available to first-time homebuyers in the District of Columbia;

(5) Information concerning financial planning after purchasing a home; and

(6) A compilation and explanation of all federal and District of Columbia tax provisions and public and private programs providing homeownership assistance.

(b) The information required under subsection (a) of this section shall be made available over the Internet and shall be provided to each public library in the District of Columbia.

(Apr. 19, 2002, D.C. Law 14-114, § 1001, 49 DCR 1468.)

Legislative history of Law 14-114. — Law 14-114, the "Housing Act of 2002", was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses

of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Editor's notes. — Section 1101 of D.C. Law 14-114 provided: "The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall promulgate rules to implement this act."

CHAPTER 27. HOUSING FINANCE AGENCY.

Subchapter I. Policy and Definitions

Sec.

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42-2701.02. Definitions.

Subchapter II. Establishment of the Agency

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42-2702.02. Board of Directors.
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- 42-2703.01. General powers.
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Sec.

- thereon; signature valid after officeholder vacates.
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Subchapter V. Public Accountability

- 42-2705.01. Agency actions governed by Administrative Procedure Act.
42-2705.02. Advisory Committees.
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- 42-2706.01. Liberal construction of chapter.
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42-2706.05. Laws or acts referred to in this chapter.

Subchapter I. Policy and Definitions.

§ 42-2701.01. Declaration of policy.

(a) The Council of the District of Columbia hereby finds: that a decline in the number of housing units in the District of Columbia, together with the existing number of substandard dwellings, has produced a critical shortage of adequate

housing for low and moderate income families; that this shortage of affordable housing and the inability of residents to obtain appropriate financing compels a substantial number of District residents to live in unsanitary, overcrowded and unsafe conditions and to expend a disproportionate portion of their incomes on housing; that these conditions are detrimental to the health and welfare of District residents and adversely affect the economy of the District; that a major cause of this housing crisis is the cost of funds made available by mortgage lenders in the District to finance housing for low and moderate income families; and further that this situation has frustrated the construction, lease, sale and purchase of housing units for low and moderate income families.

(b) The Council determines that a corporate instrumentality of the District shall be created and given authority to generate funds from private and public sources to increase the supply and lower the cost of funds available for residential mortgages and construction loans and thereby help alleviate the shortage of adequate housing. The Council further determines that this purpose can be accomplished through programs whereby mortgage lenders and/or the Agency make mortgage, construction and rehabilitation loans for single and multifamily rental and home ownership units on terms designed to expand available housing opportunities. The Council further determines that this purpose can also be accomplished through a program whereby the Agency issues bonds and lends the proceeds thereof to Eligible State and Local Government Units to enhance the Agency's ability to generate revenues to fulfill its duties under this chapter. The Council further determines that the goals of neighborhood and fiscal stability can be achieved through a policy of residential economic diversity.

(c) The Council hereby declares that the enactment of this chapter is in the public interest and for the public benefit, and that the authority and powers conferred by this chapter and the expenditure of monies pursuant to this chapter are to serve valid public purposes.

(Mar. 3, 1979, D.C. Law 2-135, § 101, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(a), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2101.

1973 Ed., § 45-1901.

Legislative history of Law 2-135. — Law 2-135, the "District of Columbia Housing Finance Agency Act," was introduced in Council and assigned Bill No. 2-161, which was referred to the committee on Housing and Urban Development. The Bill was adopted on first and second readings on July 25, 1978, and September 19, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-291 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-247. — Law 12-247, the "Housing Finance Agency Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-300, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-584 and transmitted to both Houses of Congress for its review. D.C. Law 12-247 became effective on April 20, 1999.

§ 42-2701.02. Definitions.

The following terms as used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Chapter" means this Housing Finance Agency Act.

(2) "Agency" means the District of Columbia Housing Finance Agency.

(3) "Board" means the Board of Directors of the District of Columbia Housing Finance Agency.

(4) "Bonds," "notes" and "other obligations" refer to any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness of the Agency authorized to be issued under the provisions of this chapter.

(5) "Council" means the Council of the District of Columbia.

(6) "Construction loan" means a short term advance of monies for the purpose of constructing or rehabilitating housing projects.

(7) "District" means the District of Columbia.

(8) "Eligible persons" means individuals and families who qualify for housing under a given program according to the requirements of the program as established by the Agency.

(8A) "Eligible State or Local Government Unit" means any state or political subdivision thereof within the meaning of § 103 of the Internal Revenue Code of 1986 (or successor provisions), including any agency, authority, body, commission or entity that acts on behalf of any such state or political subdivision, which is authorized under applicable law to issue bonds or enter into other obligations for the purpose of providing low and moderate income housing.

(8B) "State or Local Government Loan" means a loan or other advance of monies by the Agency to an Eligible State or Local Government Unit to be used as permitted by refunding agreements between the Eligible State or Local Government Unit and the Department of Housing and Urban Development.

(9) "Forward Commitment Mortgage Purchase Program" means a program pursuant to which the Agency commits to purchase from or originate through mortgage lenders mortgage loans committed to and originated by the mortgage lender or the Agency after the date of the Agency's commitment where the loans are to low or moderate income persons for financing housing units to be owner-occupied or are loans which meet the requirements of subsection (b) or (c) of § 42-2703.02.

(10) "Homeownership program" means any type of program through which a person can achieve an ownership position in a residential unit including, but not limited to, cooperatives and condominiums.

(11) "Housing project or project" means any undertaking to plan, develop, construct or rehabilitate one or more dwelling units located in the District of Columbia which meets the requirements of this chapter. Such undertaking may include, but is not limited to any building, land, equipment, facilities or other real or personal property which are necessary, convenient or desirable appurtenances, streets, sewers, utilities, parks, site preparation or landscaping; and other non-housing facilities, such as offices, stores, commercial facilities, community, medical, educational, social, health, recreational, and

welfare facilities, which are reasonably related to and subordinate to the housing project, consistent with the applicable Internal Revenue Code provisions, as amended, and the regulations thereunder, as determined to be necessary, convenient or desirable by the Agency. Any facility which incorporates the residence and care of persons with special needs, including but not limited to the aged, youth, students, homeless, persons with disabilities, persons requiring health and medical care, shall be deemed an undertaking for purposes of this chapter.

(11A) "Loan" means a secured or unsecured obligation issued for the purposes of financing a housing project or homeownership program.

(12) "Low income persons" means those persons and families whose annual income as determined by the Agency does not exceed the income requirements for low income persons as established by the Internal Revenue Service or the Department of Housing and Urban Development from time to time as applicable to the particular housing project or homeownership program under the Agency's plan of financing.

(13) "Moderate income persons" means those persons and families whose annual income as determined by the Agency does not exceed the income requirements for moderate income persons established by the Internal Revenue Service or the Department of Housing and Urban Development from time to time as applicable to the particular housing project or homeownership program under the Agency's plan of financing.

(14) "Mortgage" means a mortgage deed, deed of trust, or other security instrument which shall constitute a lien in the District on improvements and real property in fee simple, on a lease having a remaining term, which at the time such mortgage is acquired does not expire for at least that number of years beyond the maturity date of the obligation secured by such mortgage.

(15) "Mortgage lender" means an entity as defined in § 26-1101(11), that is deemed eligible by the Agency to participate in any of its programs.

(16) "Mortgage loan" means an obligation secured by a mortgage financing a housing project.

(17) "Sponsor" means a sole proprietor, joint venture, partnership, limited partnership, trust, corporation, cooperative, or condominium, whether non-profit or organized for profit, which owns or sponsors a housing project pursuant to the provisions of this chapter.

(18) "Subsidy" means any resources generated through appropriation by the federal or District government, or donated by a public or private source; the resources must be designated for meeting housing expense and may be payments to the occupant of a housing unit as reimbursement for monies expended, payment made for supplementing housing or rent payments made by an occupant, or payments made to effect a reduction in mortgage interest rates paid by the mortgagor of a housing unit.

(19) "Cooperative" means a rental housing unit or project, unless the Agency determines by resolution that a given unit or units in a given project shall be deemed to be a homeownership housing unit or project.

(20) "Very-Low Income" means those persons and families whose annual income as determined by the Agency does not exceed the income requirements

for very-low income persons as established by the Internal Revenue Service or the Department of Housing and Urban Development from time to time as applicable to the particular housing project or homeownership program under the agency's plan of financing.

(Mar. 3, 1979, D.C. Law 2-135, § 102, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(a)-(f), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(b), 46 DCR 1100; Apr. 12, 2000, D.C. Law 13-91, § 164, 47 DCR 520; Mar. 25, 2003, D.C. Law 14-239, § 2(a), 49 DCR)

Prior Codifications. — 1981 Ed., § 45-2102.

1973 Ed., § 45-1902.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

D.C. Law 14-239 rewrote par. (15) which had read as follows: "(15) 'Mortgage lender' means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in the District, or any insurance company authorized to do business in the District and deemed eligible by the Agency to participate in any of its programs."

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — Law 4-28, the "District of Columbia Housing Finance Agency Act Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-145, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-49 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 14-239. — Law 14-239, the "Housing Finance Agency Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-345, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on November 26, 2002, it was assigned Act No. 14-520 and transmitted to both Houses of Congress for its review. D.C. Law 14-239 became effective on March 25, 2003.

References in text. — Section 103 of the Internal Revenue Code of 1986, referred to in (8A), is codified at 26 U.S.C. § 103.

Subchapter II. Establishment of the Agency.

§ 42-2702.01. Creation; purpose.

The District of Columbia Housing Finance Agency is created as a corporate body which has a legal existence separate from the government of the District but which is an instrumentality of the government of the District created to effectuate certain public purposes.

(Mar. 3, 1979, D.C. Law 2-135, § 201, 25 DCR 5008.)

Cross references. — District of Columbia Housing Finance Agency, membership disclosure of interests, see § 1-1106.02.

Prior Codifications. — 1981 Ed., § 45-2111.

1973 Ed., § 45-1903.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Editor's notes. — Appropriations approved: Public Law 101-518, 104 Stat. 2227, the District of Columbia Appropriations Act, 1991, provided that up to \$275,000 within the 15% set-aside for special programs within the Tenant Assistance Program shall be targeted for the single-room occupancy initiative.

Repayment by D.C. Housing Finance Agency: Section 147 of Pub. Law 104-194 provided that, notwithstanding any other law, the District of Columbia Housing Finance Agency, shall not be required to repay moneys advanced by the District government (including accrued interest thereon) pursuant to Congressional appropriations for fiscal years 1980 through 1992.

§ 42-2702.02. Board of Directors.

(a) The agency shall be governed by a Board of Directors, which shall be comprised of 5 members who are residents of the District of Columbia. Two shall have experience in mortgage lending or finance, 2 shall have experience in home building, real estate, architecture, or planning, and 1 shall represent community or consumer interests. The members shall be appointed by the Mayor, with advice and consent of the Council, in accordance with § 1-523.01. Members shall be appointed for 2-year terms. Of the 5 members first appointed pursuant to this chapter, 2 shall serve for a term of 1 year and 3 shall serve for a term of 2 years.

(b) The appointing authority or the Board may remove a member of the Board for inefficiency, neglect of duty or misconduct in office, after giving the member a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense upon not less than 10 days' notice. Removal of a member by action of the Board shall require an affirmative vote of 3 members. If a member is removed by the Board, the Board shall promptly notify the Mayor and the Council of the action. Within 30 days after a vacancy occurs or a term expires, the Mayor shall nominate someone to fill the vacancy or begin the new term. The member shall hold office for the term of his appointment and shall serve until a successor has qualified. Any member shall be eligible for reappointment.

(c) The Board shall elect from among its number a chairperson, a vice chairperson, and other officers it may determine.

(d) The powers of the Agency shall be vested in the Board. A majority of the incumbent Board members shall constitute a quorum for the transaction of business, and an affirmative vote of 3 members shall be necessary for valid Agency action. Members of the Board may participate in a meeting of the Board or a committee thereof by means of conference telephone or similar communication equipment so long as all Board members participating in the meeting and members of the public can be heard by each other. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and perform all duties of the Agency. Members of the Board shall be reimbursed for actual and necessary expenses incurred while engaged in services for the Agency. A member of the Board not otherwise employed by the District may also receive per diem compensation at the rate equal to the daily equivalent of step 1 of Grade 15 of the General Schedule established under 5 U.S.C. § 5332, with a limit of \$8,000 per annum.

(e) Repealed.

(Mar. 3, 1979, D.C. Law 2-135, § 202, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(g), 28 DCR 2848; Aug. 1, 1985, D.C. Law 6-15, § 8(a), 32 DCR 3570; Oct. 5, 1985, D.C. Law 6-44, § 2(a), 32 DCR 4487; Apr. 20, 1999, D.C. Law 12-247, § 2(c), 46 DCR 1100; Oct. 19, 2002, D.C. Law 14-213, § 27, 49 DCR 8140.)

Cross references. — Mayoral nomination of District of Columbia Housing Finance Agency Board of Directors, review and approval of Council, see § 1-523.01.

Prior Codifications. — 1981 Ed., § 45-2112.

1973 Ed., § 45-1904.

Effect of amendments. — D.C. Law 14-213, in subsec. (a), substituted “Council, in accordance with § 1-523.01.” for “Council.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Housing Finance Agency Act Amendment Temporary Act of 1985 (D.C. Law 6-4, May 9, 1985, law notification 32 DCR 1).

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 6-15. — Law

6-15, the “Legislative Veto Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985, and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-44. — For legislative history of D.C. Law 6-44, see Historical and Statutory Notes following § 42-2701.07.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Editor’s notes. — Superseding of Law 6-4: Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

§ 42-2702.03. Executive Director; powers and duties; service as Secretary of Board; other necessary employees; rights and privileges thereof.

(a) The Board of Directors shall appoint an Executive Director who shall be an employee of the Agency, but who shall not be a member of the Board, and who shall serve at the pleasure of the Board and receive such compensation as shall be fixed by the Board. The Executive Director shall be appointed by the Board with the advice and consent of the Council. The Executive Director shall administer, manage and direct the affairs and activities of the Agency in accordance with the policies, control and direction of the Board. The Executive Director shall approve all accounts for salaries, allowable expenses of the Agency or of any employee or consultant thereof, and expenses incidental to the operation of the Agency. He shall perform such other duties as may be directed by the Board in carrying out the purposes of this chapter.

(a-1) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(b) The Executive Director shall be Secretary to the Board. He shall attend the meetings of the Board, shall keep a record of the proceedings of the Board,

and shall maintain and be custodian of all books, documents and papers filed with the Board, of the minutes book or journal of the Board and of its official seal.

(c)(1) The Executive Director may employ on a permanent or temporary basis such employees, including, but not limited to, technical advisors, financial advisors, accountants, legal counsel, appraisers, underwriters, and such other officers, agents and employees deemed necessary to operate the Agency efficiently, and shall determine their qualifications, duties, and compensation.

(2) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Agency unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit 8 proofs of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Agency for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(Mar. 3, 1979, D.C. Law 2-135, § 203, 25 DCR 5008; Oct. 5, 1985, D.C. Law 6-44, § 2(b), 32 DCR 4487; Apr. 20, 1999, D.C. Law 12-247, § 2(d), 46 DCR 1100; Feb. 6, 2008, D.C. Law 17-108, § 215(a), 54 DCR 10993.)

Prior Codifications. — 1981 Ed., § 45-2113.

1973 Ed., § 45-1905.

Effect of amendments. — D.C. Law 17-108 added subsec. (a-1); and, in subsec. (c), designated par. (1) and added par. (2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of District of Columbia Housing Finance Agency Act Amendment Temporary Act of 1985 (D.C. Law 6-4, May 9, 1985, law notification 32 DCR).

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 6-44. — For legislative history of D.C. Law 6-44, see Historical and Statutory Notes following § 42-2701.07.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see His-

torical and Statutory Notes following § 42-2701.01.

Legislative history of Law 17-108. — Law 17-108, the “Jobs for D.C. Residents Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Editor's notes. — Superseding of Law 6-4: Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

§ 42-2702.04. Conflict of interest; disclosure; waiver of bar against participation by interested party.

Any member, officer, or employee of the Agency who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership

interest in any firm or agency interested directly or indirectly in any transaction with the Agency including, but not limited to, any loan to any sponsor, builder or developer, shall disclose this interest to the Agency. This interest shall be set forth in the minutes of the Agency, and the member, officer, or employee having the interest shall not participate on behalf of the Agency in the authorization or implementation of any such transaction. The Board by two-thirds majority vote may allow a waiver of a member's, officer's or employee's inability to participate in circumstances where the interest falls within guidelines adopted as rules promulgated by the Board.

(Mar. 3, 1979, D.C. Law 2-135, § 204, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(h), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(e), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2114.

1973 Ed., § 45-1906.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For

legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2702.05. Requirement for public official bonding.

Each member of the Board shall execute a public official bond in the penal sum of \$25,000, and the Executive Director of the Agency shall execute a public official bond in the penal sum of \$50,000. Each public official bond shall be conditioned upon the faithful performance of the duties of the person bonded, issued by an indemnity company authorized to transact business as an indemnity company in the District, approved by the Corporation Counsel of the District, and filed in the office of the District Department of Insurance. All costs of the public official bonds shall be borne by the Agency.

(Mar. 3, 1979, D.C. Law 2-135, § 205, 25 DCR 5008; Oct. 5, 1985, D.C. Law 6-44, § 2(c), 32 DCR 4487.)

Prior Codifications. — 1981 Ed., § 45-2115.

1973 Ed., § 45-1907.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 6-44. — For legislative history of D.C. Law 6-44, see Historical and Statutory Notes following § 42-2702.07.

§ 42-2702.06. Delegation of Council authority to issue revenue bonds, notes and other obligations for Agency undertakings.

The Council delegates to the Agency the authority of the Council under § 1-204.90 to issue revenue bonds, notes and other obligations to borrow money to finance or assist in the financing of undertakings authorized by this chapter. An undertaking financed or assisted by the Agency shall constitute an

undertaking in the area of primarily low and moderate income housing if the housing project or homeownership program complies with the income restriction, rent limitations, tenant income mixtures and other restrictions as established by the Internal Revenue Service, or the Department of Housing and Urban Development as applicable under the plan of financing determined by the Agency at the time it approves the undertaking for financing or assistance, or State or Local Government Loans or supportive programs that generate revenues which benefit programs authorized under this chapter.

(Mar. 3, 1979, D.C. Law 2-135, § 206, as added Aug. 5, 1981, D.C. Law 4-28, § 2(i), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(f), 46 DCR 1100; Mar. 25, 2003, D.C. Law 14-239, § 2(b), 49 DCR 11162.)

Prior Codifications. — 1981 Ed., § 45-2116.

Effect of amendments. — D.C. Law 14-239 substituted “or supportive programs” for “are made”.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-239. — For Law 14-239, see notes following § 42-2701.02.

§ 42-2702.07. Agency reports; Council review and approval of proposals.

(a) The Board of Directors of the Agency shall determine, by enactment of an eligibility resolution that a housing project or homeownership program contemplated to be financed through a bond issuance meets the requirements of this chapter. Subsequent to enactment of an eligibility resolution, the Agency shall send to the Chairman of the Council of the District of Columbia written notification thereof, describing the nature of the housing project, the benefits designed to result therefrom, as related to the public purposes of the Agency, and the criteria under which funds will be made available.

(a-1) Each notification transmitted to the Chairman of the Council of the District of Columbia shall set forth information pertaining to the following:

- (1) Date of application;
- (2) Name and description of the project;
- (3) Address and ward location of the project;
- (4) Developer of the project;
- (5) Amount and type of financing requested;
- (6) Amount and type of federal or District funds involved; and
- (7) The number of units reserved for very-low, low and moderate income persons, income restrictions, and rent levels.

(b)(1) Repealed.

(2) The Agency may not adopt an inducement resolution or a resolution authorizing a bond issuance to fund a project nor may the agency implement a proposed housing program submitted in accordance with this section unless the proposal has been submitted to the Council for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess. During

the Council review period, comments of the Council representative from the affected ward shall be considered.

(3) If, during the 30-day review period, the Council does not adopt a resolution disapproving the proposal, the Agency may take action to implement the proposal. The Council may adopt a resolution approving the proposal prior to expiration of the 30-day period in which case the Agency may take immediate action to implement the proposal.

(c) In the event a proposal is disapproved, the resolution shall state the reasons for disapproval. The Agency staff may modify the proposal to address the concerns expressed in the resolution of disapproval and may without further action of the Board resubmit the proposal, as modified, for a 30-day review period, excluding days of Council recess. If, during the 30-day review period the Council does not adopt a resolution disapproving the resubmitted proposal, the Agency may take action to implement the proposal. The Council may adopt a resolution approving the resubmitted proposal prior to the expiration of the 30-day review period in which case the Agency may take immediate action to implement the proposal. For purposes of this section the term "proposal" shall include housing projects and programs.

(Mar. 3, 1979, D.C. Law 2-135, § 207, as added Oct. 5, 1985, D.C. Law 6-44, § 2(d), 32 DCR 4487; Feb. 24, 1987, D.C. Law 6-192, § 12, 33 DCR 7836; Apr. 20, 1999, D.C. Law 12-247, § 2(g), 46 DCR 1100; Apr. 12, 2000, D.C. Law 13-91, § 154, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 45-2117.

Effect of amendments. — D.C. Law 13-91, validating a previously made technical amendment struck the phrase "(1) Each notification transmitted to the Chairman" and inserted the phrase "(a-1) Each notification transmitted to the Chairman" in its place.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of District of Columbia Housing Finance Agency Act Amendment Temporary Act of 1985 (D.C. Law 6-4, May 9, 1985, law notification 32 DCR 1).

Legislative history of Law 6-44. — Law 6-44, the "District of Columbia Housing Finance Agency Act Amendment Act of 1985," was introduced in Council and assigned Bill No. 6-207, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-62 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and

November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 42-2701.02.

Resolutions. — Resolution 13-183, the "District of Columbia Housing Finance Agency Stanton Glenn Apartments Mortgage Revenue Bonds Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-184, the "District of Columbia Housing Finance Agency Widrich Court Apartments Mortgage Revenue Bonds Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-185, the "District of Columbia Housing Finance Agency Garfield Park Apartments Mortgage Revenue Bonds Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-219, the "District of Columbia Housing Finance Agency Fort Chaplin Park Apartments Mortgage Revenue Bonds Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-354, the "District of Columbia Housing Finance Agency Randolph Towers Apartments and Aspen Courts Apartments Mortgage Revenue Bonds Emergency Approval

Resolution of 1999", was approved effective November 2, 1999.

Resolution 13-356, the "District of Columbia Housing Finance Agency Congress Park I Apartments Mortgage Revenue Bonds Emergency Approval Resolution of 1999", was approved effective November 2, 1999.

Editor's notes. — Superseding of Law 6-4: Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

Approval of Mount Vernon Plaza Apartments as eligible project for financing: Pursuant to Resolution 6-769, the "Mount Vernon Plaza Approval Resolution of 1986," effective July 8, 1986, the Council approved the Mount Vernon Plaza as an eligible project for financing.

Approval of 1986 Single-Family Forward Commitment Mortgage Purchase Program as eligible for financing: Pursuant to Resolution 6-770, the "Housing Finance Agency Single-Family Forward Commitment Mortgage Purchase Resolution of 1986," effective July 8, 1986, the Council approved the program as eligible for financing.

Approval of Jeffrey Gardens Apartments Project as eligible for financing: Pursuant to Resolution 7-203, the "District of Columbia Housing Finance Agency Jeffrey Gardens Apartments Project Approval Resolution of 1988", effective January 5, 1988, the Council approved the Jeffrey Gardens Apartments as an eligible project for financing.

Approval of Monroe Tower Apartments Project as eligible for financing: Pursuant to Resolution 7-205, the "District of Columbia Housing Finance Agency Monroe Towers Apartments Project Approval Resolution of 1988", effective January 5, 1988, the Council approved the Monroe Towers Apartments as an eligible project for financing.

Approval of Southern Gardens Apartments Project as eligible for financing: Pursuant to Resolution 7-206, the "District of Columbia Housing Finance Agency Southern Gardens Apartments Project Approval Resolution of 1988," effective January 5, 1988, the Council approved the Southern Gardens Apartments as an eligible project for financing.

Approval of Collateralized Single-Family Mortgage Purchase Program: Pursuant to Resolution 7-271, the "Housing Finance Agency Collateralized Single-Family Mortgage Purchase Resolution of 1988", effective May 31, 1988, the Council approved the Collateralized Single-Family Mortgage Purchase Program.

Approval of Supplemental Collateralized Single-Family Mortgage Purchase Program: Pursuant to Resolution 7-344, the "Housing Finance Agency Supplemental Collateralized Single-Family Mortgage Purchase Resolution

of 1988", effective November 15, 1988, the Council approved the Supplemental Collateralized Single-Family Mortgage Purchase Program.

Approval of District of Columbia Housing Finance Agency's proposal for Massachusetts Courts Apartments: Pursuant to Resolution 8-70, the "District of Columbia Housing Finance Agency Massachusetts Courts Apartments Approval Resolution of 1989", effective June 27, 1989, the Council approved the District of Columbia Housing Agency's proposal for the Massachusetts Courts Apartments.

Approval of Columbia Housing Finance Agency's proposal for Parkchester Apartments: Pursuant to Resolution 8-245, the "D.C. Housing Finance Agency Parkchester Apartments Resolution of 1990," effective July 27, 1990, the Council approved the District of Columbia Housing Finance Agency's proposal for the Parkchester Apartments.

District of Columbia Housing Finance Agency Chastleton Apartments Refunding Resolution of 1991: Pursuant to Resolution 9-67, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency's proposal for the Chastleton Apartments.

District of Columbia Housing Finance Agency Mount Vernon Plaza Apartments Refunding Resolution of 1991: Pursuant to Resolution 9-68, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency's proposal for the Mount Vernon Plaza Apartments.

District of Columbia Housing Finance Agency Carmel Plaza North Apartments Refunding Resolution of 1991: Pursuant to Resolution 9-69, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency's proposal for the Carmel Plaza North Apartments.

District of Columbia Housing Finance Agency Parkchester Apartments Project Supplemental Financing Emergency Approval Resolution of 1991: Pursuant to Resolution 9-106, effective July 19, 1991, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency's supplemental proposal for the Parkchester Apartments.

Housing Finance Agency Savannah Park Apartments Approval Resolution of 1992: Pursuant to Resolution 9-322, effective July 24, 1992, the Council approved the District of Columbia Housing Finance Agency's proposal for the Savannah Park Apartments.

Housing Finance Agency Cloister (a.k.a. "Trinity" Apartments) Refunding Approval Emergency Resolution of 1993: Pursuant to Resolution 10-160, effective October 5, 1993, the Council approved, on an emergency basis, the District of Columbia Housing Finance

Agency's Proposal for the Cloister (a.k.a. "Trinity") Apartments.

Housing Finance Agency New Amsterdam Apartments Refunding Approval Emergency Resolution of 1993: Pursuant to Resolution 10-162, effective October 5, 1993, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency's proposal for the New Amsterdam Apartments.

District of Columbia Housing Finance Agency Tyler House Apartments Multi-Family Housing Revenue Bonds Approval Emergency Resolution of 1994: Pursuant to Resolution 10-493, effective December 6, 1994, the Council approved, on an emergency basis, the Housing Finance Agency's proposal for the Tyler House Apartments.

District of Columbia Housing Finance Agency Single Family Forward Commitment Mortgage Purchase Program Approval Emergency Resolution of 1994: Pursuant to Resolution 10-495, the Council approved, on an emergency basis, the Housing Finance Agency's proposal for the 1994 Single Family Forward Commitment Mortgage Purchase Program.

District of Columbia Housing Finance Agency Livingston Manor Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995: Pursuant to Proposed Resolution 11-60, deemed approved April 5, 1995, Council approved the District of Columbia Housing Finance Agency's proposal for the Livingston Manor Apartments.

District of Columbia Housing Finance Agency Benning Road Apartments Multi-Family Housing Revenue Bonds Emergency Approval Resolution of 1995: Pursuant to Resolution 11-80, effective June 6, 1995, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency's proposal for the Benning Road Apartments.

District of Columbia Housing Finance Agency Capitol Hill Towers Apartments Multi-Family Mortgage Revenue Refunding Bonds Resolution of 1995: Pursuant to Resolution 11-162, effective November 7, 1995, the Council approved the District of Columbia Housing Finance Agency's proposal to refund the Capitol Hill Towers Apartment Project bonds.

District of Columbia Housing Agency 1995 Single Family Forward Commitment Mortgage Purchase Program Approval Emergency Resolution of 1995: Pursuant to Resolution 11-114, effective July 11, 1995, Council approved, on an emergency basis, District of Columbia Housing Finance Agency's proposal for the 1995 Single Family Forward Commitment Mortgage Purchase Program.

District of Columbia Housing Finance Agency Capitol Park Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995: Pursuant to Proposed Resolution 11-263, deemed approved, November 2, 1995, Counsel

approved the District of Columbia Housing Finance Agency's proposal for the Capitol Park Apartments.

District of Columbia Housing finance Agency Dakotas Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995: Pursuant to Proposed Resolution 11-264, deemed approved, November 2, 1995, Counsel approved the District of Columbia Housing Finance Agency's proposal for the Dakotas Apartments.

District of Columbia Housing Finance Agency Rockburne Estates Mortgage Revenue Bonds Resolution of 1997: Proposed Resolution 12-0422, the "District of Columbia Housing Finance Agency Rockburne Estates Mortgage Revenue Bonds Resolution of 1997" was deemed approved, effective Nov. 7, 1997.

District of Columbia Housing Finance Agency Haven House Cooperative Multi-Family Mortgage Revenue Bonds Resolution of 1997: Proposed Resolution 12-0422, the "District of Columbia Housing Finance Agency Haven House Cooperative Multi-Family Mortgage Revenue Bonds Resolution of 1997" was deemed approved, effective Nov. 7, 1997.

District of Columbia Housing Finance Agency 636 Cooperative Association for Tax Exempt Multi-Family Mortgage Revenue Bonds Resolution of 1998: Pursuant to Resolution 12-(PR12-592), effective April 1, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for the 636 Cooperative Association.

District of Columbia Housing Finance Agency Archbishop Rivera Y. Damas Cooperative, Inc. Tax-Exempt Multi-Family Mortgage Revenue Bonds Resolution of 1998: Pursuant to Resolution 12-(PR12-791), effective July 16, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for Archbishop Rivera Y. Damas Cooperative, Inc.

District of Columbia Housing Finance Agency Wheeler Creek Estates Tax-Exempt Multi-Family Mortgage Revenue Bonds Approval Emergency Resolution of 1998: Pursuant to Resolution 12-620, effective July 7, 1998, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency's Eligibility Resolution for the Wheeler Creek Estates.

Housing Finance Agency Randolph Street Apartments Tax-Exempt Multi-Family Mortgage Revenue Bonds Approval Resolution of 1998: Pursuant to Resolution 12-747, effective November 10, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for the acquisition and rehabilitation of the Randolph Street Apartments in Ward 4.

Housing Finance Agency Fort Stevens Apartments Tax-Exempt Multi-Family Mortgage Revenue Bonds Approval Resolution of 1998: Pursuant to Resolution 12-748, effective November 10, 1998, the Council approved the

District of Columbia Housing Finance Agency's proposal for the acquisition and rehabilitation of the Fort Stevens Apartments in Ward 4.

Housing Finance Agency Burke Park Apartments Tax-Exempt Multi-Family Mortgage Revenue Bonds Approval Resolution of 1998: Pursuant to Resolution 12-749, effective November 10, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for the acquisition and rehabilitation of the Burke Park Apartments in Ward 2.

District of Columbia Housing Finance Agency Hamlin & 7th Street Apartments Tax-Exempt Multi-Family Mortgage Revenue

Bonds Resolution of 1998: Pursuant to Resolution 12-750, effective November 10, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for the acquisition and rehabilitation of the Hamlin & 7th Street Apartments in Ward 5.

Finance Agency Stewart Glen Apartments Tax-Exempt Multi-Family Mortgage Revenue Bonds Approval Resolution of 1998: Pursuant to Resolution 12-751, effective November 10, 1998, the Council approved the District of Columbia Housing Finance Agency's proposal for the acquisition and rehabilitation of the Stewart Glen Apartments in Ward 8.

Subchapter III. Operations of the Agency.

§ 42-2703.01. General powers.

The Agency is hereby granted all powers necessary or convenient to effectuate its corporate purposes, including but not limited to, the following:

- (1) To have perpetual succession;
- (2) To sue and be sued in its own name;
- (3) To have an official seal and power to alter that seal at will;
- (4) To acquire (by purchase or otherwise), sell, construct, lease, improve, rehabilitate, repair and otherwise maintain an office or offices at such places within the District of Columbia as the Agency shall from time to time designate and to issue bonds or otherwise provide financing for such offices;
- (5) To adopt, amend and repeal bylaws, rules and regulations to carry out its purposes under this chapter;
- (6) To make and execute contracts and all other instruments for the performance of its duties under this chapter and contracts for or relating to the development, construction, rehabilitation, improvement, maintenance, repair, operation, and management of housing projects;
- (6A) To originate and service mortgage loans or contract for the origination and servicing of mortgage loans and loans.
- (7) To employ advisers, consultants, and agents including, but not limited to, financial advisers, appraisers, accountants and legal counsel, and to fix their compensation;
- (8) To collect reasonable interest, fees and charges in connection with making and servicing its loans, including State and Local Government Loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;
- (9) To procure insurance or self-insure against any loss in connection with its property and other assets, including mortgage loans, in such amounts and from such insurers as it deems desirable;
- (10) To borrow money and to issue bonds, notes or other obligations and to give security therefor;
- (11) To enter into agreements with the United States or any agency, department, instrumentality or political subdivision thereof, to provide that

interest on any bonds, notes or other obligations of the Agency will be subject to federal income taxes;

(12) To contract for and to receive contributions, gifts, grants, subsidies, and loans of money, property, labor or other things of value from any source to be used for the purpose of this chapter and subject to the conditions upon which the contributions, gifts, grants, subsidies, and loans are made;

(13) To enter into agreements with any department, agency or instrumentality of the United States or the District and with sponsors and mortgage lenders for the purpose of planning, regulating and providing for the financing and refinancing, construction, reconstruction or rehabilitation, leasing, management, maintenance, operation, acquisition, sale or other disposition of any housing project undertaken with the assistance of the Agency under this chapter;

(13A) To make state and local government loans and enter into such agreements with the respective Eligible State and Local Government Units for the purpose of making a State or Local Government Loan on such terms and conditions as the Agency determines to be appropriate;

(14) To proceed with foreclosure action, to take assignments of leases and rentals, to acquire property in lieu of foreclosure;

(15) To own, lease, clear, reconstruct, rehabilitate, improve, repair, maintain, manage, operate, assign, encumber, or sell or otherwise dispose of any real or personal property if:

(A) The property was obtained by the Agency due to the default of any obligation held by the Agency; and

(B) Repealed.

(15A) To acquire (by purchase or otherwise), own, lease, clear, construct, reconstruct, rehabilitate, improve, repair, maintain, manage, operate, assign, encumber, or sell or otherwise dispose of any real property; provided, that:

(A) The Agency shall not finance more than 4 housing projects in any one fiscal year; and

(B) The authority of the Agency to acquire properties by purchase or otherwise under this paragraph shall terminate on December 31, 2007; provided, that before that time the Agency may submit a request for renewal of authority;

(16) To invest any funds not required for immediate disbursement, including funds held in reserve, in investments; the income derived from the investment shall be deposited as provided in § 42-2704.11;

(17) To provide technical assistance to profit and nonprofit entities in the development or operation of housing for low and moderate income persons in accordance with § 42-1734 [repealed]; to gather and distribute data and information concerning the housing needs of low and moderate income persons within the District;

(18) To the extent permitted under its contract with the holders of bonds, notes and other obligations of the Agency, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, or contract or agreement of any kind to which the Agency is a party;

(19) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by the Agency pursuant to regulations promulgated by the Agency;

(20) To make grants, or to convert loans to grants or to forgive loans, to make loans or mortgage loans, either directly or through mortgage lenders, for the purpose of assisting in developing, acquiring, constructing, rehabilitating or improving any housing project financing under this chapter;

(20A) To establish funds and reserves to provide additional security for loans provided for housing projects;

(20B) To enter into such contracts with government agencies that the Agency considers appropriate for housing projects;

(20C) To establish nonprofit and for-profit corporations, partnerships, limited liability companies, business trusts, and any other entities to act in furtherance of its general powers or purposes;

(20D) To establish such supportive programs as provided in § 42-2703.05; and

(21) To do any act necessary or convenient to the exercise of the powers granted by or reasonably implied from this chapter.

(Mar. 3, 1979, D.C. Law 2-135, § 301, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(j), 28 DCR 2848; Apr. 9, 1997, D.C. Law 11-255, § 50, 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-247, § 2(h), 46 DCR 1100; Mar. 25, 2003, D.C. Law 14-239, § 2(c), 49 DCR)

Prior Codifications. — 1981 Ed., § 45-2121.

1973 Ed., § 45-1908.

Effect of amendments. — D.C. Law 14-239 rewrote par. (4); in par. (6), substituted “this chapter and contracts for or relating to the development, construction, rehabilitation, improvement, maintenance, repair, operation, and management of housing projects;” for “this chapter;”; in par. (15)(A), substituted “rehabilitate, improve” for “rehabilitate”; repealed par. (15)(B); added pars. (15A), (20A), (20B), (20C), and (20D); and made a nonsubstantive change to par. (20). Prior to amendments, pars. (4) and (15)(B) had read as follows:

“(4) To maintain, through purchase or lease, an office or offices at such place or places within the District as it may designate;”

“(B) The Agency’s actions, as provided in this paragraph, are in preparation for disposition of such properties;”

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act

of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-239. — For Law 14-239, see notes following § 42-2701.02.

References in text. — Section 42-1734, referred to in (17), was repealed March 10, 1983, by D.C. Law 4-209, § 34.

Editor’s notes. — Repayment to General Fund: Public Law 103-334, 108 Stat. 2577, the District of Columbia Appropriations Act, 1995, provided for economic development and regulation \$56,343,000; provided that the District of Columbia Housing Finance Agency, established by § 42-2702.01, based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Housing Finance Agency’s annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated

administrative costs plus interest at a rate of four % per annum for a term of 15 years, with a deferral of payments for the first three years; provided further, that notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Housing Finance Agency and shall be repaid to the District of Columbia

government only from available operating revenues of the Housing Finance Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses; provided further, that upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia.

§ 42-2703.02. Financing of housing projects.

(a) The Agency may make, issue commitments for, participate in making loans or mortgage loans to sponsors for the financing of housing projects for eligible persons. Such housing projects shall comply with all applicable requirements regarding tenant income mixtures, tenant income, the number of units reserved for very-low, low and moderate income persons, and other requirements established by the Internal Revenue Service, the Department of Housing and Urban Development or other laws, rules and guidelines applicable under the Agency's plan of financing.

(b) The Agency when purchasing property shall issue only bonds that are government entity bonds of the Agency or 501(c)(3) bonds created by the Agency for the specific purpose of undertaking a development project.

(Mar. 3, 1979, D.C. Law 2-135, § 302, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(k), 28 DCR 2848; Aug. 1, 1985, D.C. Law 6-15, § 8(b), 32 DCR 3570; Oct. 5, 1985, D.C. Law 6-44, § 2(e), 32 DCR 4487; Apr. 20, 1999, D.C. Law 12-247, § 2(i), 46 DCR 1100; Mar. 25, 2003, D.C. Law 14-239, § 2(d), 49 DCR 11162.)

Section references. — This section is referred to in § 42-2701.02.

Prior Codifications. — 1981 Ed., § 45-2122.

1973 Ed., § 45-1909.

Effect of amendments. — D.C. Law 14-239 designated the existing text as subsection (a); and added subsec. (b).

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 42-2702.02.

Legislative history of Law 6-44. — For legislative history of D.C. Law 6-44, see Historical and Statutory Notes following § 42-2702.07.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-239. — For Law 14-239, see notes following § 42-2701.02.

§ 42-2703.03. Financing of homeownership programs.

The Agency may invest in, purchase, make commitments to purchase, take assignments from mortgage lenders, originate, and service mortgage loans either directly or through mortgage lenders pursuant to criteria established by the Agency under a Homeownership program. Such criteria shall comply with the requirements of the Internal Revenue Service, the Department of Housing

and Urban Development or other laws, rules and guidelines applicable under the Agency's plan of financing.

(Mar. 3, 1979, D.C. Law 2-135, § 303, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(l)-(n), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(j), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2123.

1973 Ed., § 45-1910.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For

legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2703.04. Loans to mortgage lenders; requirements for reinvestment of proceeds by lender. [Repealed].

Repealed.

(1973 Ed., § 45-1911; Mar. 3, 1979, D.C. Law 2-135, § 304, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(o), 28 DCR 2848; June 11, 1992, D.C. Law 9-118, § 7, 39 DCR 3189; Apr. 18, 1996, D.C. Law 11-110, § 49, 43 DCR 530; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-247, § 2(k), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2124.

1973 Ed., § 45-1911.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 9-118. — Law 9-118, the "District of Columbia Government Employer-Assisted Housing Act of 1992," was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on

April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for its review. D.C. Law 9-118 became effective on June 11, 1992.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2703.05. Supportive programs.

(a) The Agency may establish, administer or contract for the administration of any program which assists sponsors or eligible persons, "or Eligible State or Local Government Units", as determined by the Agency consistent with the declarations of policy under § 42-2701.01 and the delegation of authority under § 42-2702.06.

(b) The Agency may establish, administer, or contract for the administration

of any program that involves providing loans or other financial assistance directly by the Agency or by an entity established by the Agency under this chapter or indirectly through an Agency-approved financial institution, to persons residing within any state or political subdivision thereof within the meaning of section 103 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 29; 26 U.S.C. § 103) (or successor provisions), which loan or other financial assistance is eligible for, or made in conjunction with the provision of, mortgage insurance under any program of the Department of Housing and Urban Development or meets the guidelines established by Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Veterans Affairs, or the Rural Development Agency, and which loan or other financial assistance will result in the generation of revenues that will benefit programs authorized under this chapter.

(Mar. 3, 1979, D.C. Law 2-135, § 305, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(l), 46 DCR 1100; Mar. 25, 2003, D.C. Law 14-239, § 2(e), 49 DCR 11162.)

Prior Codifications. — 1981 Ed., § 45-2125.

1973 Ed., § 45-1912.

Effect of amendments. — D.C. Law 14-239 designated the existing text as subsection (a); and added subsec. (b).

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see His-

torical and Statutory Notes following § 42-2701.01.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-239. — For Law 14-239, see notes following § 42-2701.02.

§ 42-2703.06. Rulemaking.

The Agency shall establish rules and regulations to effectuate the purposes of this chapter.

(Mar. 3, 1979, D.C. Law 2-135, § 306, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(m), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2126.

1973 Ed., § 45-1913.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2703.07. Technical assistance, loans, grants and consultant services.

The Agency may provide eligible persons, sponsors or such individual, private or public corporation, association, group, organization, Eligible State or Local Government Unit, or any other entity with technical assistance, loans, grants or consultant services consistent with the authority of this chapter.

(Mar. 3, 1979, D.C. Law 2-135, § 307, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(n), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2127.

1973 Ed., § 45-1914.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2703.08. Exemption from rent control.

(a) Housing projects assisted by the Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the provisions of Chapter 35 of this title.

(b) The Agency shall establish, by rulemaking, procedures for evictions and protections from retaliatory action for tenants of housing projects exempted from Chapter 35 of this title under subsection (a) of this section. Such procedures and protections shall be in accordance with subchapter V of Chapter 35 of this title.

(c) The Agency shall establish, by rulemaking, conditions and procedures for relocation assistance to tenants displaced from housing projects which are exempted from Chapter 35 of this title under subsection (a) of this section. Such conditions and procedures shall be in accordance with subchapter VII of Chapter 35 of this title.

(d) Each owner of a rental accommodation subject to the provisions of this chapter shall file simultaneously with the Agency and with the Rental Housing Commission an exemption statement which shall contain the following information:

(1) The actual rent for each rental unit in the accommodation, the services included, and the facilities and charges therefor;

(2) The number of bedrooms in the rental accommodation; and

(3) A list of any outstanding violations of the Housing Regulations of the District of Columbia, issued August 11, 1955 (C.O. 55-1503), applicable to such accommodation.

(e) Tenants of housing projects exempted by this chapter from Chapter 35 of this title, who, except for such exemption, would be eligible for rent supplements under subchapter III of Chapter 35 of this title, shall have the same rights to such supplements as tenants residing in a project subject to Chapter 35 of this title.

(f) Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit shall receive notice in writing advising him or her that rent increases for the accommodation are not regulated by Chapter 35 of this title.

(Mar. 3, 1979, D.C. Law 2-135, § 308, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(p), 28 DCR 2848; Oct. 5, 1985, D.C. Law 6-44, § 2(f), 32 DCR 4487.)

Prior Codifications. — 1981 Ed., § 45-2128.

1973 Ed., § 45-1915.

Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 6-44. — For legislative history of D.C. Law 6-44, see Historical and Statutory Notes following § 42-2702.07.

Subchapter IV. Financial Affairs of the Agency.

§ 42-2704.01. Receipt of funds; disposition thereof.

In connection with the exercise of its powers under this chapter, the Agency may receive gifts, grants, appropriations, loans, bond or note proceeds, or other funds, property or other assets, or any other type of financial assistance from any federal, District, private, or other source and may utilize such funds as determined by rules issued by the Board. Such rules shall also govern the establishment of, administration of, and expenditure from, reserve funds. The source of such funds and the use thereof shall be a part of the annual reporting requirement of § 42-2705.03. The rules shall be submitted to the Chairman of the Council for review on the same day as the rules are transmitted for publication to the District of Columbia Register.

(Mar. 3, 1979, D.C. Law 2-135, § 401, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(q), 28 DCR 2848.)

Prior Codifications. — 1981 Ed., § 45-2131.

1973 Ed., § 45-1916.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Editor's notes. — Repayment by D.C. Housing Finance Agency: Section 147 of Pub. Law 104-194 provided that, notwithstanding any other law, the District of Columbia Housing Finance Agency, shall not be required to repay moneys advanced by the District government (including accrued interest thereon) pursuant to Congressional appropriations for fiscal years 1980 through 1992.

§ 42-2704.01a. Repayment of funds.

The Agency shall not be required to repay moneys advanced by the District government (including accrued interest thereon) pursuant to Congressional appropriations for fiscal years 1980 through 1992, and any obligation to repay these moneys shall be forgiven.

(Mar. 3, 1979, D.C. Law 2-135, § 401a, as added Apr. 9, 1997, D.C. Law 11-197, § 3, 43 DCR 4567.)

Prior Codifications. — 1981 Ed., § 45-2131.1.

Legislative history of Law 11-197. — Law 11-197, the "Housing Finance Agency Loan Forgiveness Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-537, which was referred to the Committee on

Housing and Urban Affairs. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-359 and transmitted to both Houses of Congress for its review. D.C. Law 11-197 became effective April 9, 1997.

Effective date. — Section 5 of D.C. Law 11-197 provided that the act shall take effect on the latter of: (1) following approval by the Mayor (or the Council in the event of a veto override), approval by the Financial Responsibility and Management Assistance Authority as provided in § 47-392.03(a), and a 30-day period of Congressional review as provided in § 1-233 (c)(1), and publication in the District of Columbia Register; or (2) enactment by Congress of legislation providing that the moneys advanced to the agency pursuant to congressional appro-

priations need not be repaid to the General Fund of the District of Columbia.

Editor's notes. — Repayment by D.C. Housing Finance Agency: Section 147 of Pub. Law 104-194 provided that, notwithstanding any other law, the District of Columbia Housing Finance Agency, shall not be required to repay moneys advanced by the District government (including accrued interest thereon) pursuant to Congressional appropriations for fiscal years 1980 through 1992.

§ 42-2704.02. Issuance of bonds and notes; renewals and refunds; deemed obligations of Agency; negotiable instruments; director, employer, or agent not personally liable.

(a) *Borrowing authority.* — The Agency may, by resolution, authorize the issuance of bonds and notes or other obligations ("bonds or notes") for undertakings authorized by this chapter. In addition, the Agency may issue notes to renew notes and bonds to pay notes, including, the interest thereon. Whenever expedient, the Agency may refund bonds, including bonds previously issued by other than the Agency, by the issuance of new bonds, regardless of whether the bonds to be refunded have matured. The Agency is the successor to any and all District of Columbia Section 11(b) bond issuing authority. The Agency may also issue bonds for a combination of refund, renewal, and financing programs authorized by this chapter.

(b) *Obligations of the Agency.* — Except as expressly provided otherwise by the Agency, bonds and notes of the Agency are obligations payable solely from revenues derived from the respective housing projects which such obligations are issued to finance, provided that bonds and notes of the Agency issued, in whole or in part, for the purpose of enabling the Agency to make State and Local Government Loans are obligations payable solely, to the extent issued for such purpose, from revenues derived from repayment of State and Local Government Loans made from proceeds of such bonds and notes. The Agency may expressly provide additional security by pledge or contribution from any source in accordance with § 1-204.71.

(c) *Negotiable instruments.* — Regardless of their form or character, bonds and notes of the Agency are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia (§ 28:1-101 et seq.), subject only to the provisions of the bonds and notes for registration.

(d) *No personal liability.* — No director, employee or agent of the Agency is personally liable solely because a bond, note or other obligation is issued. The Agency shall indemnify any person who shall have served as a commissioner, officer, or employee of the Agency against financial loss or litigation expense arising out of or in connection with any claim or suit involving allegations that pecuniary harm has been sustained as a result of any transaction authorized by this chapter, unless such person is found by a final judicial determination not to have acted in good faith and for a purpose which he reasonably believed to be lawful and in the best interest of the Agency.

(e) *Compliance required.* — The issuance and performance of bonds, notes, and other obligations by the Agency as contemplated in this chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to Chapter 5 of Title 2 and, except as otherwise provided in the chapter, shall not be required to comply with the requirements of any legislation passed by the Council. No notice (except as provided in this section), proceeding, consent, or approval shall be required for the issuance or performance of any bond, note, or other obligation of the Agency or the execution of any instrument relating thereto or to the security therefor, except as provided in this chapter or in rules and regulations promulgated by the Agency. Notice of the adoption of a bond resolution shall be given to the Mayor and the Council before the adoption of such resolution.

(Mar. 3, 1979, D.C. Law 2-135, § 402, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(r), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(o), 46 DCR 1100.)

Section references. — This section is referred to in § 42-2705.01.

Prior Codifications. — 1981 Ed., § 45-2132.

1973 Ed., § 45-1917.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.03. Terms for sale of bonds and notes; effect of resolution authorizing sale; pledge of agency and lien thereon; signature valid after officeholder vacates.

(a) *General.* — The Agency may stipulate by resolution the terms for sale of its bonds and notes in accordance with this chapter, including the following:

- (1) The date a bond or note bears;
- (2) The date a bond or note matures; provided, that notes shall not mature later than 10 years from the date of original issuance and bonds shall not mature later than 50 years from the date of original issuance;
- (3) Whether bonds are issued as serial bonds, as term bonds, or as a combination of the 2;
- (4) The denomination;
- (5) The interest rate or rates, or variable rate or rates changing from time to time in accordance with a base or formula;
- (6) The registration privileges;
- (7) The medium and method for payment; and
- (8) The terms of redemption.

(b) *Public or private sale.* — The Agency may sell its bonds or notes at public or private sale and may determine the price for sale.

(c) *Additional provisions part of contract.* — If the resolution authorizing

the sale of bonds or notes contains any of the provisions listed below, the provisions must also be part of the contract with holders of the bonds or notes. The provisions in the resolution may include the following:

(1) The custody, security, expenditure or application of proceeds of the sale of bonds or notes of the Agency (hereinafter "proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;

(2) The pledge of revenue securing payment;

(3) A pledge of assets of the Agency, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;

(4) Use of gross income from mortgages owned by the Agency and payment on principal of mortgages owned by the Agency;

(5) Use of reserves or sinking funds;

(6) Use of proceeds from sale of bonds or notes and a pledge of proceeds to secure payment;

(7) Limitation of issuance of additional bonds or notes, including terms of issuance and security, and the refunding of outstanding or other bonds or notes;

(8) Procedure for amendment or abrogation of a contract with holders of bonds or notes, the amount of bonds or notes, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Vesting in a trustee property, power and duties, which may include the power and duties of a trustee appointed by holders of bonds or notes under this chapter;

(10) Limitation or abrogation of the right of holders of bonds or notes to appoint a trustee under this chapter;

(11) Defining the nature of default in the obligations of the Agency to the holders of bonds or notes and providing rights and remedies of holders in the event of default, including the right to appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) Any other provisions of like or different character which affect the security of holders of bonds or notes.

(d) *Pledge of the Agency.* — A pledge of the Agency is binding from the time it is made. Any funds or property pledged are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract or other claim against the Agency regardless of notice. Neither the resolution nor any other instrument creating a pledge need be recorded.

(e) *Signature.* — The signature of any officer of the Agency which appears on a bond or note remains valid if that person ceases to hold that office.

(Mar. 3, 1979, D.C. Law 2-135, § 403, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(s), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(p), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2133.

1973 Ed., § 45-1918.

Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.04. Trust indenture to secure bonds or notes; provisions protecting holders; expenses treated as operating expenses.

(a) *Authority.* — The Agency may secure bonds, notes, or other obligations by a trust indenture between the Agency and a corporate trustee which has the authority to exercise corporate trust powers within the District.

(b) *Provisions.* — A trust indenture of the Agency may contain provisions for protecting and enforcing the rights and remedies of holders of bonds or notes in accordance with the provisions of the resolution authorizing the sale of bonds or notes.

(c) *Expenses.* — The Agency may treat expenses incurred in carrying out a trust indenture as operating expenses.

(Mar. 3, 1979, D.C. Law 2-135, § 404, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(q), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2134.

1973 Ed., § 45-1919.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.05. Agency's purchase of its own bonds and notes; maximum price.

Subject to pre-existing agreements with the holders of bonds, notes, or other obligations, the Agency may purchase its own bonds, notes, or other obligations which may then be cancelled upon such terms and conditions as established by the Agency.

(1) If the bonds, notes, or other obligations are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds, notes, or other obligations are not redeemable, the price cannot exceed the redemption price applicable on the 1st date after the purchase upon which the bonds, notes or other obligations become subject to redemption plus accrued interest to that date.

(Mar. 3, 1979, D.C. Law 2-135, § 405, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(r), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2135.

1973 Ed., § 45-1920.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.06. Special or reserve funds; management and investment of funds.

The Agency may establish special or reserve funds in furtherance of its authority under this chapter. Notwithstanding other provisions of District law and subject to agreements with holders of bonds and notes, the Agency shall manage its own funds, and may invest funds not required for disbursement in a manner the Agency determines prudent and in accordance with § 42-2704.13.

(Mar. 3, 1979, D.C. Law 2-135, § 406, 25 DCR 5008; Mar. 8, 1984, D.C. Law 5-50, § 3(a), 30 DCR 5916; Mar. 16, 1993, D.C. Law 9-185, § 3(a), 39 DCR 8221; June 28, 1994, D.C. Law 10-134, § 4(a), 41 DCR 2597; Apr. 18, 1996, D.C. Law 11-110, § 62, 43 DCR 530.)

Cross references. — Limitation on investment of District of Columbia employees retirement funds, see § 1-721.

Section references. — This section is referred to in § 42-2704.13.

Prior Codifications. — 1981 Ed., § 45-2136.

1973 Ed., § 45-1921.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(a) of South Africa Sanctions Repeal Act 1993 (D.C. Law 10-75, March 8, 1994, law notification 41 DCR 1518).

Emergency legislation. — For temporary amendment of section, see § 4(a) of the South Africa Sanctions Emergency Repeal Act of 1993 (D.C. Act 10-127, October 25, 1993, 40 DCR 7583) and § 4(a) of the South Africa Sanctions Congressional Recess Emergency Repeal Act of 1994 (D.C. Act 10-176, January 25, 1994, 41 DCR 512).

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 5-50. — Law 5-50, the “Prohibition of the Investment of Public Funds in Financial Institutions and Companies Making Loans to or Doing Business with the Republic of South Africa or Namibia Act of 1983,” was introduced in Council and assigned Bill No. 5-18, which was referred to

the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 6, 1983, and October 4, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-185. — For legislative history of D.C. Law 9-185, see Historical and Statutory Notes following § 42-2704.13.

Legislative history of Law 10-134. — Law 10-134, the “South Africa Sanctions Repeal Act of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 42-2703.04.

Delegation of Authority. — Delegation of authority under D.C. Law 9-185, “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992”, see Mayor’s Order 93-76, June 16, 1993.

§ 42-2704.07. No limitation, alteration, or impairment of rights and remedies of bondholders and noteholders.

The District pledges to the holders of any bonds or notes issued under this chapter that the District will not limit or alter rights vested in the Agency to fulfill agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until the bonds and notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The Agency is authorized to include this pledge of the District in any agreement with the holders of bonds or notes.

(Mar. 3, 1979, D.C. Law 2-135, § 407, 25 DCR 5008.)

Prior Codifications. — 1981 Ed., § 45-2137. legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.
1973 Ed., § 45-1922.

Legislative history of Law 2-135. — For

§ 42-2704.08. Faith and credit and taxing power of District not pledged on obligation; statement thereto.

Bonds, notes, and other obligations issued under the provisions of this chapter do not constitute an obligation of the District, but are payable solely from the revenues or assets of the Agency. Each bond, note, or other obligation issued under this chapter must contain on its face a statement that the Agency is not obligated to pay principal or interest except from the revenues or assets pledged and that neither the faith and credit nor the taxing power of the District is pledged to the payment of the principal or interest on a bond, note, or other obligation.

(Mar. 3, 1979, D.C. Law 2-135, § 408, 25 DCR 5008; Apr. 20, 1999, D.C. Law 12-247, § 2(s), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2138. **Legislative history of Law 12-247.** — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.
1973 Ed., § 45-1923.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.09. Bonds and notes as legal investments and securities.

The bonds and notes of the Agency are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment

companies and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds and notes are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(Mar. 3, 1979, D.C. Law 2-135, § 409, 25 DCR 5008.)

Prior Codifications. — 1981 Ed., § 45-2139.

1973 Ed., § 45-1924.

Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.10. District tax exemptions; payments in lieu; exceptions.

(a) Assets and income of the Agency or of any entity established by the Agency pursuant to § 42-2703.01(20C) are exempt from District taxation. The Agency may make, at its discretion, payment in lieu of taxation.

(b) Bonds and notes issued by the Agency and the interest thereon are exempt from District taxation except estate, inheritance, and gift taxes.

(Mar. 3, 1979, D.C. Law 2-135, § 410, 25 DCR 5008; Mar. 25, 2003, D.C. Law 14-239, § 2(f), 49 DCR 11162.)

Prior Codifications. — 1981 Ed., § 45-2140.

1973 Ed., § 45-1925.

Effect of amendments. — D.C. Law 14-239, in subsec. (a), substituted “of the Agency or of any entity established by the Agency pursuant to § 42-2703.01(20C)” for “of the Agency”.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 14-239. — For Law 14-239, see notes following § 42-2701.02.

§ 42-2704.11. Deposits; payments out of accounts; contracts involving monies held in trust or otherwise for payment of notes or bonds.

(a) All monies of the Agency, except as otherwise authorized in this chapter, shall be deposited as soon as practicable in 1 or more separate accounts in financial institutions regulated or insured by a federal or District agency. Monies in these accounts shall be paid out on checks signed by the Executive Director or other authorized officers or employees of the Agency.

(b) Notwithstanding the provisions of this section, the Agency shall have power to contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any monies of the Agency and of any monies held in trust or otherwise for the payment of notes or bonds. Monies held in trust pursuant to a contract with holders of notes or bonds may be secured in the same manner as monies of the Agency.

(Mar. 3, 1979, D.C. Law 2-135, § 411, 25 DCR 5008.)

Section references. — This section is referred to in §§ 42-2703.01 and 42-2704.13.

Prior Codifications. — 1981 Ed., § 45-2141.
1973 Ed., § 45-1926.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2704.12. Investment of funds with financial institution or company doing business with Republic of South Africa. [Repealed].

Repealed.

(June 28, 1994, D.C. Law 10-134, § 4(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 45-2142.

Legislative history of Law 10-134. — For

legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 42-2704.06.

§ 42-2704.13. Investment of funds with financial institution or company doing business with Northern Ireland.

(a) For the purposes of this section, the term “agency funds” means all monies managed and all funds established pursuant to §§ 42-2704.06 and 42-2704.11.

(b)(1) Agency funds invested in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from underrepresented religious groups on the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;

(C) Banning provocative religious or political emblems from the workplace;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

(3) On or before the 1st day of October of each year, the Mayor shall determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which agency funds are or will be invested, in adhering to the MacBride Principles as enumerated in paragraph (2) of this subsection and provide an annual report of his or her findings for presentation to the Council, which report shall be made available for public inspection.

(Mar. 3, 1979, D.C. Law 2-135, § 413, as added Mar. 16, 1993, D.C. Law 9-185, § 3(b), 39 DCR 8221.)

Prior Codifications. — 1981 Ed., § 45-2143.

Legislative history of Law 9-185. — Law 9-185, the “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-311,

which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-350 and transmitted to both Houses of Congress for its review. D.C. Law 9-185 became effective on March 16, 1993.

Subchapter V. Public Accountability.

§ 42-2705.01. Agency actions governed by Administrative Procedure Act.

Except as provided in subsection (e) of § 42-2704.02, all actions of the Agency shall be conducted in accordance with the District of Columbia Administrative Procedure Act (§ 2-501 et seq.).

(Mar. 3, 1979, D.C. Law 2-135, § 501, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(t), 28 DCR 2848.)

Prior Codifications. — 1981 Ed., § 45-2151.

1973 Ed., § 45-1927.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

§ 42-2705.02. Advisory Committees.

The Agency, from time to time, may establish advisory committees or groups to advise the Agency with respect to matters the Agency shall designate and

may appoint persons to serve on such advisory committees or groups as the Agency may deem necessary consistent with the provisions of this chapter. The function of such committees or groups shall be solely advisory in nature, and no such committee or group shall have authority to act for, or on behalf, of the Agency.

(Mar. 3, 1979, D.C. Law 2-135, § 502, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(u), 28 DCR 2848; Apr. 20, 1999, D.C. Law 12-247, § 2(t), 46 DCR 1100.)

Prior Codifications. — 1981 Ed., § 45-2152.

1973 Ed., § 45-1928.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 4-28. — For

legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

Legislative history of Law 12-247. — For legislative history of D.C. Law 12-247, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2705.03. Annual report by Agency; contents.

The Agency shall, within 90 days of the end of each fiscal year, submit an annual report of its activities for the preceding year to the Mayor, the Council, and the Advisory Board. The report shall set forth a complete operating financial statement of the Agency during the fiscal year it covers, its housing program operations and accomplishments, the names of all new employees and their pay schedules, titles, and place of residence, its plans for the succeeding fiscal year, and its recommendations for needed action on the part of the Mayor or Council, with respect to the purposes of the Agency.

(Mar. 3, 1979, D.C. Law 2-135, § 503, 25 DCR 5008; Feb. 6, 2008, D.C. Law 17-108, § 215(b), 54 DCR 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(g), 56 DCR 1117.)

Section references. — This section is referred to in § 42-2704.01.

Prior Codifications. — 1981 Ed., § 45-2153.

1973 Ed., § 45-1929.

Effect of amendments. — D.C. Law 17-108 substituted “accomplishments, and the names of all new employees and their pay schedules, titles, and place of residence,” for “accomplishments,”.

D.C. Law 17-353 substituted “the names” for “and the names”.

Legislative history of Law 2-135. — For legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 42-2702.03.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

§ 42-2705.04. Agency to arrange annual audit; transmission to Mayor and Council.

The Agency shall contract at least once each year with an independent certified public accountant to audit the books and accounts of the Agency. The Agency shall transmit the audit to the Mayor and Council within 10 days of receipt.

(Mar. 3, 1979, D.C. Law 2-135, § 504, 25 DCR 5008.)

Prior Codifications. — 1981 Ed., § 45-2154.
1973 Ed., § 45-1930.
Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

Subchapter VI. Miscellaneous Provisions.

§ 42-2706.01. Liberal construction of chapter.

The provisions of this chapter are to be liberally construed so as to effectuate those powers which are specifically enumerated.

(Mar. 3, 1979, D.C. Law 2-135, § 601, 25 DCR 5008.)

Prior Codifications. — 1981 Ed., § 45-2161.
1973 Ed., § 45-1931.
Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2706.02. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or provision of this chapter shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective, and no other section, subsection, subdivision, paragraph, sentence, clause, or provision shall on account thereof be deemed invalid or ineffective.

(Mar. 3, 1979, D.C. Law 2-135, § 602, 25 DCR 5008.)

Prior Codifications. — 1981 Ed., § 45-2162.
1973 Ed., § 45-1932.
Legislative history of Law 2-135. — For

legislative history of D.C. Law 2-135, see Historical and Statutory Notes following § 42-2701.01.

§ 42-2706.03. Allocation of bond issuing authority.

All of the authority of the District government to issue qualified mortgage bonds in each calendar year under the Mortgage Subsidy Bond Tax Act of 1980 (26 U.S.C. § 1100 et seq.) as it may be amended from time to time with respect to the District is allocated to the Agency.

(Mar. 3, 1979, D.C. Law 2-135, § 603, as added Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

Prior Codifications. — 1981 Ed., § 45-2163.
1973 Ed., § 45-1932.

Legislative history of Law 4-28. — For legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.

References in text. — The Mortgage Subsidy Bond Tax Act of 1980 is codified as notes under 26 U.S.C. §§ 1, 103A, and 141, not as 26 U.S.C. § 1100 et seq.

§ 42-2706.04. Disposition of assets on dissolution.

If the Agency is dissolved by repeal of this chapter, or ceases to exist for any other reason, all of its assets (including, but not limited to, cash, accounts receivable, reserve funds, real or personal property, and contract and other rights) shall automatically be assigned to and become the property of the District.

(Mar. 3, 1979, D.C. Law 2-135, § 604, as added Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

Prior Codifications. — 1981 Ed., § 45-2164. legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.
1973 Ed., § 45-1932.
Legislative history of Law 4-28. — For

§ 42-2706.05. Laws or acts referred to in this chapter.

Each law or act of the District identified in this chapter shall include any and all amendments thereto made from time to time, and shall include any and all superseding laws and acts, unless the superseding law or act expressly provides otherwise.

(Mar. 3, 1979, D.C. Law 2-135, § 605, as added Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

Prior Codifications. — 1981 Ed., § 45-2165. legislative history of D.C. Law 4-28, see Historical and Statutory Notes following § 42-2701.02.
1973 Ed., § 45-1932.
Legislative history of Law 4-28. — For

CHAPTER 28. HOUSING PRODUCTION TRUST FUND.

Subchapter I. General Provisions

Sec.	Sec.
42-2801. Definitions.	42-2812.02. Findings.
42-2802. Housing Production Trust Fund established.	42-2812.03. Bond authorization for New Community Initiative neighborhoods, including Sursum Corda.
42-2802.01. Housing Production Trust Fund Board.	42-2812.04. Bond details.
42-2803. Coordination of housing programs for targeted populations; community outreach.	42-2812.05. Sale of the bonds.
42-2803.01. Annual report by Mayor.	42-2812.06. Payment and security.
42-2804. Rules.	42-2812.07. Financing and Closing Documents.
	42-2812.08. Authorized delegation of authority.
	42-2812.09. Limited liability.
	42-2812.10. District officials.
	42-2812.11. Maintenance of documents.
	42-2812.12. Information reporting.

*Subchapter II. Bond Authorization**Subchapter I. General Provisions.***§ 42-2801. Definitions.**

For the purposes of this chapter, the term:

(1)(A) "Area median income" means:

(i) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

(ii) For a household of 3 persons, 90% of the area median income for a household of 4 persons;

(iii) For a household of 2 persons, 80% of the area median income for a household of 4 persons;

(iv) For a household of one person, 70% of the area median income for a household of 4 persons;

(v) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4).

(B) Any percentage of household income referenced in this chapter (e.g., 80% of household income) shall be determined through a direct mathematical calculation and shall not take into account any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers.

(1A) "Board" means the Housing Production Trust Fund Board established under § 42-2802.01.

(1B) "Child development facility" means a facility where a child development program is provided for infants and children, away from home, for less than 24 hours a day for each infant or child, and which is to be located on a proposed housing or commercial project under a linked development agree-

ment. The term “child development facility” shall include a child development center, child development home, or infant care center, but does not include a public or private elementary school engaged in legally required education and related functions.

(1C) “Continuing affordability” means:

(A) For rental units, a period of at least 40 years; and

(B) For for-sale units, a period of at least 15 years, unless the unit is located in a census tract with a poverty rate of 30 percent or more as determined by the U.S. Census Bureau’s decennial census, in which case the period shall be 10 years. If a for-sale unit is sold within the term of years under this paragraph, the new affordability term shall begin on the date of the sale.

(1D) “Department” means the Department of Housing and Community Development.

(2) “District” means the District of Columbia.

(2A) “Eligible household” means a household that, at the time of its purchase of a qualified housing unit, had total annual income at or below 120% of the area median income; provided, that the annual incomes of eligible households assisted through an allocation of proceeds from the Housing Production Trust Fund shall not exceed 80% of the area median income.

(3) “Extremely low income” means a household income equal to 30% or less of the area median income.

(4) “Fund” means the Housing Production Trust Fund established pursuant to § 42-2802.

(5) “Housing production” means the construction, rehabilitation, or preservation of decent, safe, and affordable housing.

(5A) “Land Trust Plan” means the District of Columbia Workforce Housing Land Trust Design and Implementation Plan, as amended and approved by subchapter III-A of Chapter 10 of Title 6 [§ 6-1061.01 et seq.].

(6) “Low income” means a household income equal to, or less than, 80% of the area median income and greater than 50% of the area median income.

(7) “Moderate income” means a total income equal to between 50% and 80% of the Standard Metropolitan Statistical Area median as certified by the Department.

(8) “Nonprofit housing developer” means a housing developer who qualifies as a nonprofit organization under 26 U.S.C. § 501(c)(3).

(9) “Targeted population” means low and moderate income families and individuals, including the elderly, people with disabilities, and single parent families.

(9A) “Very low income” means a household income equal to, or less than, 50% of the area median income and greater than 30% of the area median income.

(10) “WMATA” means Washington Metropolitan Area Transit Authority.

(11) “Workforce Housing Land Trust” means the tax-exempt organization selected by the Deputy Mayor for Planning and Economic Development to administer the pilot program pursuant to § 6-1061.02(b).

(12) “Workforce Housing Production Program Approval Act” means subchapter III-A of Chapter 10 of Title 6 [§ 6-1061.01 et seq.].

(Mar. 16, 1989, D.C. Law 7-202, § 2, 36 DCR 444; Apr. 19, 2002, D.C. Law 14-114, § 501(a), 49 DCR 1468; Nov. 13, 2003, D.C. Law 15-39, § 222(a), 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, § 74(a)(1), 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 2012(a), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 60, 52 DCR 2638; Apr. 24, 2007, D.C. Law 16-305, § 62, 53 DCR 6198; Dec. 24, 2008, D.C. Law 17-285, § 3(a), 55 DCR 11986.)

Prior Codifications. — 1981 Ed., § 45-3101.

Effect of amendments. — D.C. Law 14-114 redesignated existing par. (1) as par. (1B); inserted pars. (1), (1A), (3A), and (9A); and rewrote par. (6) which had read:

“(6) “Low-income” means a total income equal to less than 50% of the Standard Metropolitan Statistical Area median as certified by the Department.”

D.C. Law 15-39 added the definition of continuing affordability.

D.C. Law 15-105, in sub-subpars. (iii), (iv), and (v) of par. (1)(A), and in par. (3), validated previously made technical corrections.

D.C. Law 15-205, in par. (1C), substituted “40” for “30” in subpar. (A), and rewrote subpar. (B) which had read as follows: “(B) For for-sale units, a period of at least 5 years.”

D.C. Law 15-354 validated previously made technical changes.

D.C. Law 16-305, in par. (9), substituted “people with disabilities” for “the disabled”.

D.C. Law 17-285 added pars. (2A), (5A), (11), and (12).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Housing Production Trust Fund Affordability Period Temporary Amendment Act of 2002 (D.C. Law 14-298, April 11, 2003, law notification 50 DCR 5856).

For temporary (225 day) amendment of section, see § 2(a) of Housing Production Trust Fund Continuing Basis Definition Temporary Amendment Act of 2003 (D.C. Law 14-304, May 3, 2003, law notification 50 DCR 3778).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Housing Production Trust Fund Affordability Period Emergency Amendment Act of 2002 (D.C. Act 14-536, December 2, 2002, 49 DCR 11648).

For temporary (90 day) amendment of section, see § 2(a) of Housing Production Trust Fund Continuing Basis Definition Emergency Amendment Act of 2002 (D.C. Act 14-599, January 7, 2003, 50 DCR 661).

For temporary (90 day) amendment of section, see § 2(a) of Housing Production Trust Fund Continuing Basis Definition Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-61, April 16, 2003, 50 DCR 3379).

For temporary (90 day) amendment of section, see § 2012(a) of Fiscal Year 2005 Budget

Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2012(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 7-202. — Law 7-202, the “Housing Production Trust Fund Act of 1988,” was introduced in Council and assigned Bill No. 7-264, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-273 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003,” was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 42-1103.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 42-1103.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 17-285. — Law 17-285, the “Workforce Housing Production Program Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-279 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 1, 2008, and October 7, 2008, respectively. Signed by the Mayor on October 27, 2008, it was assigned Act No. 17-551 and transmitted to both Houses of Congress for its review. D.C. Law 17-285 became effective on December 24, 2008.

Short title. — Short title of subtitle C of title II of Law 15-39: Section 221 of D.C. Law 15-39

provided that subtitle C of title II of the act may be cited as the Continuing Basis Definition Amendment Act of 2003.

Short title of subtitle B of title II of Law

15-205: Section 2011 of D.C. Law 15-205 provided that subtitle B of title II of the act may be cited as the Housing Production Trust Fund Amendment Act of 2004.

CASE NOTES

In general.

“Housing Now! Act of 1990” initiative calling for deposit of new revenues in existing revolving fund established by District of Columbia council would improperly interfere with council’s allocation power since council would have

no discretion about allocation of new revenues raised by the initiative. D.C. Code 1981, §§ 45-3101 to 45-3104, 45-3102(c), (c)(1), 47-813. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

§ 42-2802. Housing Production Trust Fund established.

(a) There is established the Housing Production Trust Fund as a permanent revolving special revenue fund within the Governmental Funds of the District apart from the General Fund consisting of identifiable, renewable, and segregated capital, which shall be administered by the Department to provide assistance in housing production for targeted populations.

(b) The Fund shall be used to provide:

- (1) Pre-development loans for nonprofit housing developers;
- (2) Grants for architectural designs for adaptive re-use of previously nonresidential structures;
- (3) Loans to develop housing and provide housing services for low- and very low-income elderly persons who have special needs;
- (4) Bridge loans and gap financing to reduce up-front costs and costs of residential development and to keep a housing project in operation, if circumstances change adversely during development;
- (5) Loans for first-effort model projects;
- (6) Financing for the construction of new housing, or rehabilitation or preservation of existing housing;
- (7) Financing for site acquisition, construction loan guarantees, collateral, or operating capital;
- (8) Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects;
- (8A) Loans authorized through the Homestead Housing Preservation Program in § 42-2107;
- (8B) Payments to a person contracted to perform services under § 42-2105.01;
- (9) Other loans and grants for housing production determined by the Department to be consistent with the purposes of this chapter;
- (10) Funds for the administration of the Fund, not to exceed 10% in fiscal year 2009 or earlier, not to exceed 15% in fiscal year 2010, not to exceed 15% in fiscal year 2011, and not to exceed 10% in fiscal year 2012 or later of the funds deposited into the Fund pursuant to subsection (c) of this section; and
- (11)(A) Funds for the New Communities Initiative as that term is defined in subparagraph (B) of this paragraph; provided, that the use of the funds for the initiative is consistent with the provisions and purposes of this section and

meets the requirements of § 42-2812.03(d) and the rules promulgated pursuant to this chapter.

(B) For the purposes of this paragraph, the term “New Communities Initiative” means a large scale and comprehensive plan, submitted by the Mayor to the Council for approval, that provides housing infrastructure with a special focus on public housing, provides critical social support services, decreases the concentration of poverty and crime, enhances access to education, and provides training and employment education to neighborhoods where crime, unemployment, and truancy converge to create intractable physical and social conditions.

(b-1)(1) At least 40% of the funds disbursed from the Fund during a fiscal year shall be for the purposes of assisting in the provision of housing opportunities for very low-income households, which includes individuals who have previously been incarcerated for or convicted of a felony under state or federal law and who are otherwise entitled to services and assistance pursuant to this chapter, including maximizing the possibility of home ownership. The Mayor may submit a written request to the Council for a waiver of the 40% requirement if, by the 4th quarter of the fiscal year, the Mayor has not received a sufficient number of viable housing proposals. The Council shall approve or disapprove the waiver by resolution within 30 days, and the resolution shall be deemed disapproved if the Council does not act within this 30-day period.

(2) At least 40% of the funds disbursed from the Fund during a fiscal year shall be for the purposes of assisting in the provision of housing opportunities for extremely low-income households, including maximizing the possibility of home ownership. The Mayor may submit a written request to the Council for a waiver of the 40% requirement if, by the 4th quarter of the fiscal year, the Mayor has not received a sufficient number of viable housing proposals. The Council shall approve or disapprove the waiver by resolution within 30 days, and the resolution shall [be] deemed disapproved if the Council does not act within this 30-day period.

(3) At least 50% of the funds disbursed from the Fund during a fiscal year shall be for the purposes of assisting in the provision of rental housing. The Mayor may submit a written request to the Council for a waiver of the 50% requirement if, in the 3rd quarter of the fiscal year, the Mayor has not received a sufficient number of viable rental housing proposals. The Council shall approve or disapprove the waiver by resolution within 30 days, and the resolution shall be deemed approved if the Council does not act within the 30-day period.

(b-2)(1) An amount not to exceed \$16 million of the funds deposited into the Fund may be used by the Mayor to secure bonds issued for the benefit of the New Communities Initiative or other purposes consistent with the Housing Production Trust Fund uses and pursuant to subsection (b)(11) of this section; provided, that securitization above \$16 million may only occur upon certification by the Mayor that resources are needed to fulfill the New Communities projects.

(2) Council authorization by act shall be required for any amount above \$12 million in the Fund to secure financing for the New Community Initiative or other purposes consistent with the Housing Production Trust Fund uses.

(b-3) Notwithstanding any other provision of this chapter or any other law to the contrary, \$4 million of the funds deposited into the Fund may be made available by the Mayor to the Workforce Housing Land Trust. The uses of the funds shall be governed exclusively by the provisions of the Land Trust Plan and the requirements of subchapter III-A of Chapter 10 of Title 6 [§ 6-1061.01 et seq.].

(b-4)(1) Notwithstanding any other provision of this chapter or any other law, the Mayor may transfer an amount not to exceed \$18 million from the Fund to the Rent Supplement Fund established by § 6-226(d)(1), for the purpose of funding in fiscal year 2012 the assistance programs set forth in §§ 6-226 through 6-229.

(2) None of the funds transferred to the Rent Supplement Fund pursuant to paragraph (1) of this subsection shall be used for administrative costs.

(3) If, pursuant to the Contingency for Additional Estimated Revenue Act of 2011, passed on 2nd reading on June 14, 2011 (Enrolled version of Bill 19-203) [Subtitle P of Title VII of D.C. Law 19-21], the appropriation for the District of Columbia Housing Authority is increased by an amount by which a revised revenue estimate exceeds the revenue estimate of the Chief Financial Officer of the District of Columbia dated February 28, 2011, the transfer set forth in paragraph (1) of this subsection shall be reduced by an equal amount.

(c) There shall be deposited in the Fund:

(1) Fee option contributions made by commercial developers under a commercial linked development policy to be established by statute by the Council;

(2) Community development program contributions made pursuant to subchapter I of Chapter 7 of Title 26, as determined by the Superintendent of Banking and Financial Institutions in consultation with the Department;

(3) Appropriated amounts;

(4) Grants, fees, donations, or gifts from public and private sources;

(5) Repayments of principal and interest on loans provided from the Fund;

(6) Proceeds realized from the liquidation of security interests held by the District under terms of assistance provided from the Fund;

(7) Interest earned from the deposit or investment of monies from the Fund;

(8) All revenues, receipts, and fees of whatever source derived from the operation of the Fund;

(9) Repealed.

(10) Any fee or portion of an application fee that the Zoning Commission, by rule, may require an applicant for a Planned Unit Development to pay when the applicant proposes a housing production option or fee option in connection with a planned unit development application, to the extent that the Zoning Commission designates that the fee or portion of that fee shall be allocable to the Fund;

(11) Available community development block grants;

(12) Repealed.

(13) Repealed.

(14)(A) Repayments of loans, including principal and interest, provided under § 42-2107; and

(B) Proceeds realized from the liquidation of any security interests held by the District under the terms of assistance provided from the fund through the Homestead Housing Preservation Program established in Chapter 21 of this title;

(15) \$5 million on October 1, 2002;

(16) Beginning October 1, 2003, 15% of the real property transfer tax imposed by § 47-903 and 15% of the deed recordation tax imposed by § 42-1103; provided, that if, in any fiscal year, the Chief Financial Officer certifies the proposed budget will not be balanced as required by § 1-206.03(c) if the provisions of this paragraph take effect, the applicable percentage for the fiscal year shall be the amount derived from the available general fund balance;

(16A) [Not funded].

(17) All fines collected pursuant to § 6-1041.03, which shall be used exclusively to fund the Mayor's purchase of dwelling units for sale or rental to low- and moderate-income households as authorized by § 6-1041.04(c).

(d) The Department shall:

(1) Periodically review Fund revenue sources to determine what additional revenue sources may be required to assure the continuation of the Fund and its programs and shall request Council action to access revenue sources otherwise unavailable to the Department;

(2) File with the Chairperson of the Committee on Economic Development quarterly reports on activities and expenditures;

(3) Conduct annual audits, publish annual reports, hold public hearings, and make annual assessments of the continued housing needs of targeted populations;

(4) Monitor for compliance written agreements entered into by the Department and commercial developers pursuant to this chapter;

(5) Provide outreach and housing production counseling and technical assistance to individuals or groups interested in producing housing for targeted populations as provided in § 42-2803(b);

(6) Encourage profit and nonprofit developers to produce housing units of 3 or more bedrooms designed to accommodate large families and to produce child development facilities in a housing development;

(7) Give priority to nonprofit housing developers for receipt of loans from the Fund; and

(8) Include in the rules promulgated pursuant to § 42-2804 provisions to assure that housing units produced pursuant to this chapter shall be affordable on a continuing basis for targeted populations; provided, that the Department shall not be required to assure affordability on a continuing basis where assistance is provided for the rehabilitation of owner-occupied single-family homes or where assistance is provided under Chapter 21 of Title 42 or another statutory program.

(Mar. 16, 1989, D.C. Law 7-202, § 3, 36 DCR 444; Apr. 19, 2002, D.C. Law 14-114, §§ 501(b), 802, 49 DCR 1468; Oct. 1, 2002, D.C. Law 14-190, § 1102, 49

DCR 6968; June 3, 2003, D.C. Law 14-307, § 302, 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 222(b), 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, §§ 74(a)(2), (d), 75(a), 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 2012(b), 51 DCR 8441; May 24, 2005, D.C. Law 15-357, § 402, 52 DCR 1999; Oct. 20, 2005, D.C. Law 16-33, § 2172(b), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, §§ 5(n), 63, 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-192, § 2062(a), 53 DCR 6899; Mar. 14, 2007, D.C. Law 16-275, § 203, 54 DCR 880; Sept. 18, 2007, D.C. Law 17-20, § 2402(a), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 2010, 55 DCR 7598; Dec. 24, 2008, D.C. Law 17-285, § 3(b), 55 DCR 11986; Mar. 25, 2009, D.C. Law 17-365, § 2, 56 DCR 1217; Mar. 3, 2010, D.C. Law 18-111, § 2101, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2092, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2033, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 45-3102.

Effect of amendments. — D.C. Law 14-114, in subsec. (b)(3), substituted “low- and very low-income” for “low- and moderate- income”; in subsec. (b)(8), substituted a semicolon for “; and”; added subsecs. (b)(8A) and (b)(8B); in subsec. (b)(9), substituted “other Loans and grants” for “other loans”, and substituted “; and” for a period at the end; added subsecs. (b)(10) and (b-1); added subsecs. (c)(12), (13), and (14); in subsec. (c)(12), substituted a semicolon for “; and”; in subsec. (c)(13), substituted a semicolon for a period; and, in subsec. (d)(2), deleted “Housing and” following “Committee on”.

D.C. Law 14-190, in subsec. (c), repealed pars. (12) and (13), and added pars. (15) and (16). Prior to repeal, pars. (12) and (13) read as follows:

“(12) Beginning October 1, 2002, 15% of the real property transfer tax imposed by § 47-903 and 15% of the deed recordation tax imposed by § 42-1103;”

“(13) Proceeds realized from the sale of abandoned or deteriorated properties pursuant to Title VIII of the Housing Act of 2001, unless those properties are sold pursuant to Chapter 21 of this title; and”

D.C. Law 14-307, in subsec. (c), substituted “\$5 million” for “\$11.5 million” in par. (15), and validated a previously made technical correction in par. (16).

D.C. Law 15-39, in subsec. (d)(8), substituted “targeted populations; provided, that the Department shall not be required to assure affordability on a continuing basis where assistance is provided for the rehabilitation of owner-occupied single-family homes or where assistance is provided under Chapter 21 of Title 42 or another statutory program for “targeted populations”.

D.C. Law 15-105, in par. (9) of subsec. (b), and pars. (12) to (16) of subsec. (c), validated previously made technical corrections.

D.C. Law 15-205, in par. (10) of subsec. (b), substituted “deposited into the Fund pursuant to subsection (c)” for “expended from the Fund during the fiscal year”.

D.C. Law 15-357, in subsec. (b-1)(A), substituted “very low-income households, which includes individuals who have previously been incarcerated for or convicted of a felony under state or federal law and who are otherwise entitled to services and assistance pursuant to this chapter,” for “very low-income households,”.

D.C. Law 16-33, in subsecs. (b)(8B) and (b)(9), “and” was deleted from the end of the subsections; in subsec. (b)(10), substituted “fiscal year; and” for “fiscal year.”; and added subsecs. (b)(11) and (b-2).

D.C. Law 16-191, in subsec. (b)(10), inserted “of this section” and validated a previously made technical correction.

D.C. Law 16-192 rewrote subsecs. (a) and (b-2).

D.C. Law 16-275 added subsec. (c)(17).

D.C. Law 17-20, in subsec. (b-2)(1), substituted “\$16 million” for “12 million” in two places, and inserted “; provided, that securitization above \$16 million may only occur upon certification by the Mayor that resources are needed to fulfill the New Communities projects”.

D.C. Law 17-219 repealed subsec. (c)(9), which had read as follows: “(9) Lease payments from loans received under the Land Acquisitions for Housing Development Opportunities Program.”.

D.C. Law 17-285 added subsec. (b-3).

D.C. Law 17-365, in subsec. (c), deleted “and” from the end of par. (16) and added par. (16A).

D.C. Law 18-111, in subsec. (b)(10), substituted “, beginning in fiscal year 2009, 10%” for “5%”.

D.C. Law 18-223, in subsec. (b)(10), substituted “not to exceed 10% in fiscal year 2009 or earlier, not to exceed 15% in fiscal year 2010, not to exceed 15% in fiscal year 2011, and not to

exceed 10% in fiscal year 2012 or later" for "not to exceed in a fiscal year, beginning in fiscal year 2009, 10%".

D.C. Law 19-21 added subsec. (b-4).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Housing Production Trust Fund Affordability Period Temporary Amendment Act of 2002 (D.C. Law 14-298, April 11, 2003, law notification 50 DCR 5856).

For temporary (225 day) amendment of section, see § 2(b) of Housing Production Trust Fund Continuing Basis Definition Temporary Amendment Act of 2003 (D.C. Law 14-304, May 3, 2003, law notification 50 DCR 3778).

For temporary (225 day) amendment of section, see § 3 of Workforce Housing Production Program Temporary Amendment Act of 2007 (D.C. Law 17-44, November 24, 2007, law notification 55 DCR 3).

For temporary (225 day) amendment of section, see § 3 of Workforce Housing Production Program Temporary Amendment Act of 2008 (D.C. Law 17-244, October 21, 2008, law notification 55 DCR 11707).

Section 302 of D.C. Law 18-222 rewrote subsec. (b)(10) to read as follows:

"(10) Beginning on October 1, 2009, funds for the administration of the Fund deposited into the fund pursuant to subsection (c) of this section:

"(A) Not to exceed 10% in fiscal year 2009 or earlier;

"(B) Not to exceed 15% in fiscal year 2010;

"(C) Not to exceed 15% in fiscal year 2011; and

"(D) Not to exceed 10% in fiscal year 2012 or later; and".

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Housing Production Trust Fund Affordability Period Emergency Amendment Act of 2002 (D.C. Act 14-536, December 2, 2002, 49 DCR 11648).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2(b) of Housing Production Trust Fund Continuing Basis Definition Emergency Amendment Act of 2002 (D.C. Act 14-599, January 7, 2003, 50 DCR 661).

For temporary (90 day) amendment of section, see § 1102 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2003 Budget

Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2(b) of Housing Production Trust Fund Continuing Basis Definition Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-61, April 16, 2003, 50 DCR 3379).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2012(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2012(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2172(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2062(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 2 of District of Columbia Housing Authority northwest One/Temple Courts Subsidiary Establishment Approval Emergency Act of 2006 (D.C. Act 16-664, December 28, 2006, 54 DCR 1127).

For temporary (90 day) amendment of section, see § 2062(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2402(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 3 of Workforce Housing Production Program Emergency Amendment Act of 2007 (D.C. Act 17-104, July 27, 2007, 54 DCR).

For temporary (90 day) amendment of section, see § 3 of Workforce Housing Production Program Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-201, November 26, 2007, 54 DCR 11903).

For temporary (90 day) amendment of section, see § 3 of Workforce Housing Production Program Emergency Amendment Act of 2008 (D.C. Act 17-440, July 16, 2008, 55 DCR 8290).

For temporary (90 day) amendment of section, see § 2101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2101 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2092 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 2 of Housing Production Trust Fund Pollin Memorial Community Dedicated Tax Appropriations Authorization Emergency Act of 2011 (D.C. Act 19-62, May 11, 2011, 58 DCR 4242).

Legislative history of Law 7-202. — For legislative history of D.C. Law 7-202, see Historical and Statutory Notes following § 42-2801.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 42-204.

Legislative history of Law 14-298. — For Law 14-298, see notes following § 42-2801.

Legislative history of Law 14-304. — For Law 14-304, see notes following § 42-2801.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 42-1103.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 42-2801.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 42-1103.

Legislative history of Law 15-357. — Law 15-357, the “Omnibus Public Safety Ex-offender Self-sufficiency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-744 and transmitted to both Houses of Congress for its review. D.C. Law 15-357 became effective on May 24, 2005.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-1102.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 47-308.02.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 16-275. — Law 16-275, the “Inclusionary Zoning Implementation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-779, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-632 and transmitted to both Houses of Congress for its review. D.C. Law 16-275 became effective on March 14, 2007.

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 42-1103.

Legislative history of Law 17-285. — For Law 17-285, see notes following § 42-2802.

Legislative history of Law 17-365. — Law 17-365, the “Housing Production Trust Fund Stabilization Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-943 which was referred to the Committee on Housing and Public Affairs. The Bill was adopted on first and second readings on November 18, 2008, and December 16, 2008, respectively. Approved without the signature of the Mayor on January 23, 2009, it was assigned Act No. 17-700 and transmitted to both Houses of Congress for its review. D.C. Law 17-365 became effective on March 25,

Short title. — Short title of subtitle A of title XI of Law 14-190: Section 1101 of D.C. Law 14-190 provided that subtitle A of title XI of the act may be cited as the Housing Production Trust Fund Amendment Act of 2002.

Short title: Section 2061 of D.C. Law 16-192 provided that subtitle E of title II of the act may be cited as the “Housing Production Trust Fund and New Communities Financing Clarification Act of 2006”.

Short title: Section 2401 of D.C. Law 17-20 provided that subtitle S of title II of the act may be cited as the “New Communities Amendment Act of 2007”.

Short title: Section 2100 of D.C. Law 18-111 provided that subtitle K of title II of the act may be cited as the “Housing Production Trust Fund Amendment Act of 2009”.

Short title: Section 2091 of D.C. Law 18-223 provided that subtitle I of title II of the act may be cited as the "Housing Production Trust Fund and Affordable Housing Production Report Amendment Act of 2010".

Delegation of Authority. — Delegation of authority to Acquire Certain Real Estate in the District of Columbia, see Mayor's Order 2007-81, April 2, 2007 (54

Editor's notes. — For approval of the Northwest One Redevelopment Plan and authorization of the Mayor to exercise eminent domain authority in the area bounded by North Capitol Street, N.E., K Street, N.E., New Jersey Avenue, N.E., and New York Avenue, N.E.,

see the Northwest One/Sursum Corda Affordable Housing Protection, Preservation and Production Act of 2006, effective November 16, 2006 (D.C. Law 16-188; 53 DCR 6750).

Section 3 of D.C. Law 17-365 provided that this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-365 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-365, are not in effect.

CASE NOTES

In general.

"Housing Now! Act of 1990" initiative calling for deposit of new revenues in existing revolving fund established by District of Columbia council would improperly interfere with council's allocation power since council would have

no discretion about allocation of new revenues raised by the initiative. D.C. Code 1981, §§ 45-3101 to 45-3104, 45-3102(c), (c)(1), 47-813. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

§ 42-2802.01. Housing Production Trust Fund Board.

(a) There is hereby established a Housing Production Trust Fund Board. The Board shall advise the Mayor on the development, financing, and operation of the Fund and other matters related to the production of housing for low-income, very low-income, and extremely low-income households. The Board may review the uses of the Fund for their conformity with the purposes of this chapter and the Board shall have reasonable access to records related to the Fund to perform this review.

(b) The Board shall be composed of 9 members, selected as follows:

(1) One member shall be a representative of the financial services industry.

(2) One member shall be a representative of the nonprofit housing production community.

(3) One member shall be a representative of the for-profit housing production industry.

(4) One member shall be a representative of an organization that advocates for the production, preservation, and rehabilitation of affordable housing for lower-income households.

(5) One member shall be a representative of the low-income tenant association.

(6) One member shall be a representative of an organization that advocates for people with disabilities.

(7) The remaining 3 members shall have significant knowledge of an area related to the production, preservation, and rehabilitation of affordable housing for lower-income households.

(c) The members of the Board shall be appointed by the Mayor within 50 days of April 19, 2002, with the advice and consent of the Council.

(d) The terms of the members of the Board shall be 4 years; provided, that of the initial 9 members of the Board, the Mayor shall appoint 5 members to serve 2-year terms.

(e) No member of the Board may serve more than 2 terms.

(f) The Chairperson of the Board shall be designated by the Mayor with the advice and consent of the Council.

(Mar. 16, 1989, D.C. Law 7-202, § 3a, as added June 8, 1990, D.C. Law 8-133, § 2, 37 DCR 2369; Apr. 19, 2002, D.C. Law 14-114, § 501(c), 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 28(b), 49 DCR 8140; Apr. 24, 2007, D.C. Law 16-305, § 63, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-3102.1.

Effect of amendments. — D.C. Law 14-114 rewrote this section which had read as follows: “Any nongovernment member of a board established by the Mayor to administer or provide advice on the administration of the Housing Production Trust Fund shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia.”

D.C. Law 14-213, in subsec. (c), validated a previously made technical correction; and in subsec. (d), substituted “9” for

See Note to § 42-2801.

Legislative history of Law 8-88. — Law 8-88, the “Housing Production Trust Fund Board Amendment Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-474. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Approved without the signature of the Mayor on January 3, 1990, it

was assigned Act No. 8-139 and transmitted to both Houses of Congress for its review. D.C. Law 8-88 became effective on March 15, 1990.

Legislative history of Law 8-133. — Law 8-133, the “Housing Production Trust Fund Board Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-475, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Approved without the signature of the Mayor on April 2, 1990, it was assigned Act No. 8-187 and transmitted to both Houses of Congress for its review. D.C. Law 8-133 became effective on March 15, 1990.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-2803. Coordination of housing programs for targeted populations; community outreach.

(a) The Department shall establish a one-stop center to:

- (1) Assist nonprofit housing developers;
- (2) Assist housing developers and commercial developers in housing production for targeted populations; and
- (3) Provide to potential housing developers easy and adequate access to information on housing production programs.

(b) There is established, within the Department, the Nehemiah Community Housing Opportunity Program (“Nehemiah Program”), a pilot project to provide grants, loans, and available land to eligible nonprofit organizations in accordance with this section.

(1) Real property shall be transferred from the RLA Revitalization Corporation to qualified nonprofit organizations (“qualified applicants”) pursuant to subsection (c) of this section.

(2) To be eligible, a nonprofit organization shall:

(A) Comply with the guidelines and procedures established by the Nehemiah Program;

(B) Be a neighborhood-based nonprofit organization;

(C) Propose to construct or substantially rehabilitate not less than 50 single family homes located in a targeted area;

(D) Provide for the involvement of local residents in the planning and construction of homes;

(E) Provide for a systematic effort of door-to-door canvassing in the immediate area where the nonprofit organization is located to offer Nehemiah Program houses to residents for homeownership;

(F) Accumulate or establish a plan to accumulate \$300,000 in non-District funds through membership fees, donations, or gifts;

(G) Propose construction methods that will reduce the cost per square foot below the average per square foot construction cost in the market area involved;

(H) Demonstrate market demand by utilizing the residents of the neighborhood in which the nonprofit organization is located as homebuyers of Nehemiah Program homes;

(I) Develop a marketing plan that includes a range of affordable prices that includes a 20% set aside for very low-income purchasers; and

(J) Provide technical assistance to the homebuyer in the areas of financial management, legal rights attendant to homeownership, and other aspects of homeownership.

(3) The Department shall grant a qualified applicant the exclusive right to develop land specified in the development plan submitted by the applicant.

(4) A qualified applicant shall be eligible for a \$1,000,000 loan, partially funded through loans from the Fund, at a below market rate set by the Department.

(5) Each single family home sold through the Nehemiah Program shall be sold to a person who:

(A) Is a first-time homebuyer or who has not owned a home in the previous 3 years;

(B) Will occupy the home as his or her principal place of residence for at least 5 years; and

(C) Agrees not to sell, convey, lease, or otherwise alienate the home, or place liens or encumbrances on the home, for a 5-year period commencing on the date of property settlement and ending on the 5th anniversary of the settlement date without the written approval of the Mayor. The Mayor, by rule, shall establish appropriate alienation fees to be assessed against a homeowner who alienates a home purchased pursuant to the Nehemiah Program in violation of this paragraph. Alienation fees shall not take priority over mortgage liens.

(6) Qualified purchasers of Nehemiah Program homes shall be eligible for up to \$25,000 in grants or loans, depending on the income of the purchaser and purchase price of the home.

(7) Grants shall be repaid to the Fund if the purchaser sells, conveys, leases, or otherwise alienates the home.

(c) The Department shall develop an annual community outreach plan, which shall promote maximum visibility of the Fund and its operations and

full participation by District, developers, lenders, and District residents who request assistance under this chapter.

(Mar. 16, 1989, D.C. Law 7-202, § 4, 36 DCR 444; Apr. 19, 2002, D.C. Law 14-114, § 501(d), 49 DCR 1468; Mar. 2, 2007, D.C. Law 16-191, § 98, 53 DCR 6794.)

Section references. — This section is referred to in § 42-2802.

Prior Codifications. — 1981 Ed., § 45-3103.

Effect of amendments. — D.C. Law 14-114, in subsec. (b)(2)(I), substituted “very low-income purchasers” for “low income purchasers”.

D.C. Law 16-191, in subsec. (b)(1), substituted “RLA Revitalization Corporation” for “District of Columbia Redevelopment Land Agency (‘RLA’)”.

Legislative history of Law 7-202. — For legislative history of D.C. Law 7-202, see Historical and Statutory Notes following § 42-2801.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

§ 42-2803.01. Annual report by Mayor.

No later than April 1 of each fiscal year, the Mayor shall transmit to the Council a Housing Production Trust Fund Annual Report. The report shall include the following information:

(1) The amount of money expended from the Housing Production Trust Fund during the fiscal year;

(2) The number of loans and grants made during the fiscal year;

(3) The number of low-income, very low-income, and extremely low-income households and individuals assisted through Fund expenditures;

(4) A list of each project on which funds from the Fund were expended, including, for each project:

(A) A brief description of the project, including the name of the project sponsor;

(B) The amount of money expended on the project;

(C) Whether the money expended was in the form of a loan or a grant; and

(D) The general terms of the loan or grant;

(5) The amount and percentage of funds expended on homeownership projects;

(6) The amount and percentage of funds expended on rental housing projects;

(7) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 30% of the area median income;

(8) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 50% of the area median income;

(9) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 80% of the area median income;

- (10) The number of housing units assisted, including the number of rental housing units assisted and the number of homeownership units assisted; and
- (11) The amount expended on administrative costs during the fiscal year.

(Mar. 16, 1989, D.C. Law 7-202, § 4a, as added Apr. 19, 2002, D.C. Law 14-114, § 501(e), 49 DCR 1468; Sept. 14, 2011, D.C. Law 19-21, § 2042, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 substituted “No later than April 1” for “Within 60 days after the end”.

Emergency legislation. — For temporary (90 day) addition of section, see § 2093 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 42-2802.

Short title. — Short title: Section 2041 of D.C. Law 19-21 provided that subtitle E of title II of the act may be cited as “Affordable Housing Annual Reporting Amendment Act of 2011”.

Editor’s notes. — Section 1101 of D.C. Law 14-114 provided: “The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall promulgate rules to implement this act.”

Section 2093 of D.C. Law 18-223 provided:

“Sec. 2093. Affordable housing production report.

“(a) The Mayor shall transmit to the Council an affordable housing production report that shall include the following information:

“(1) The amount of money expended by the Department of Housing and Community Development for the acquisition and production of affordable housing during the fiscal year;

“(2) The number of loans and grants made during the fiscal year;

“(3) The number of low-income, very low-income, and extremely low-income households and individuals assisted through the expenditures;

“(4) A list of each project for which funds were expended, including, for each project:

“(A) A brief description of the project, including the name of the project sponsor;

“(B) The amount of money expended on the project;

“(C) Whether the money expended was in the form of a loan or a grant; and

“(D) The general terms of the loan or grant;

“(5) The amount and percentage of funds expended on homeownership projects;

“(6) The amount and percentage of funds expended on rental housing projects;

“(7) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 30% of the area median income;

“(8) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 50% of the area median income;

“(9) The amount and percentage of funds expended on rental housing or homeownership opportunities for households with incomes at or below 80% of the area median income;

“(10) The number of housing units assisted, including the number of rental housing units assisted and the number of homeownership units assisted; and

“(11) The amount expended on administrative costs during the fiscal year.

“(b) The Mayor shall include the affordable housing production report as a subunit of the Housing Production Trust Fund Annual Report required by section 4a of the Housing Production Trust Fund Act of 1988, effective April 19, 2002 (D.C. Law 14-114; D.C. Official Code § 42-2803.01).”

§ 42-2804. Rules.

Rules to implement this chapter shall be promulgated by the Mayor pursuant to subchapter I of Chapter 5 of Title 2, and submitted to the Council within 90 days after March 16, 1989 for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 16, 1989, D.C. Law 7-202, § 5, 36 DCR 444.)

Section references. — This section is referred to in § 42-2802.

Prior Codifications. — 1981 Ed., § 45-3104.

Legislative history of Law 7-202. — For legislative history of D.C. Law 7-202, see Historical and Statutory Notes following § 42-2801.

Resolutions. — Resolution 14-579, the “Housing Production Trust Fund Regulatory Amendment Approval Resolution of 2002”, was approved effective October 18, 2002.

Resolution 16-393, the “Housing Production Trust Fund Regulatory Amendment Approval Resolution of 2005”, was approved effective November 26, 2005.

Subchapter II. Bond Authorization.

§ 42-2812.01. Definitions.

For the purpose of this subchapter, the term:

(1) “Allocated Fund” means the portion of the Fund established pursuant to § 42-2802 that equals the amount that is deposited in the Fund from the real property transfer tax imposed by § 47-903 and the deed recordation tax imposed by § 42-1103.

(2) “Authorized Delegate” means the City Administrator, the Chief Financial Officer, the Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor’s functions under this chapter pursuant to § 1-204.22(6).

(3) “Bond Counsel” means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(4) “Bonds” means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this subchapter.

(5) “Chairman” means the Chairman of the Council of the District of Columbia.

(6) “Chief Financial Officer” means the Chief Financial Officer established pursuant to § 1-204.24a(a).

(7) “City Administrator” means the City Administrator established pursuant to § 1-204.22(7).

(8) “Closing Documents” means all documents and agreements other than Financing Documents that may be necessary and appropriate to issue, sell, and deliver the bonds contemplated thereby, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(9) “Department” means the Department of Housing and Community Development.

(10) “Financing Documents” means the documents other than Closing Documents that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the bonds, including any offering document, and any required supplements to any such documents.

(11) “Home Rule Act” means Chapter 2 of Title 1.

(12) “New Communities Initiative” shall have the same meaning as in section 42-2802(b)(11)(B).

(Mar. 16, 1989, D.C. Law 7-202, § 201, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C.

Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle J of title II of Law 16-33: Section 2171 of D.C. Law 16-33 provided that subtitle J of title II of the act may be cited as the Housing Production Trust Fund and New Communities Financing Amendment Act of 2005.

Delegation of Authority. — Delegation of Authority to the Deputy Mayor for Planning and Economic Development—Implementation of the New Communities Initiative, see Mayor’s Order 2008-165, December 31, 2008 (56 DCR 334).

§ 42-2812.02. Findings.

The Council finds that:

(1) Section 1-204.90 provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated in § 1-204.90 where the ultimate obligation to repay the revenue bonds, notes, or other obligations is that of one or more governmental persons or entities.

(2) Under § 42-2802, the Council established the Housing Production Trust Fund as a permanent proprietary revolving fund to be administered by the Department to provide assistance in housing production for targeted populations.

(3) The Mayor wishes to issue bonds for the benefit of the Fund and to pledge to repayment of the bonds a portion of the monies deposited into the Fund and to use the proceeds of the bonds to accomplish certain of the purposes of this chapter.

(4) Section 1-204.90 provides that bonds may be issued to assist in undertakings in the area of housing.

(5) The authorization, issuance, sale, and delivery of the bonds are desirable, are in the public interest, and will promote the purposes and intent of § 1-204.90 and of this chapter.

(Mar. 16, 1989, D.C. Law 7-202, § 202, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.03. Bond authorization for New Community Initiative neighborhoods, including Sursum Corda.

(a) Pursuant to § 1-204.90 and this subchapter, the Mayor is authorized to issue bonds to assist in financing, refinancing, or reimbursing costs of under-

takings by the District to accomplish the purposes of the New Communities Initiative. Subject to Council approval by resolution submitted by the Mayor in accordance with subsection (d) of this section, the Mayor is authorized to issue bonds to assist in financing, refinancing, or reimbursing costs of developing mixed income and mixed use projects situated in:

(1) The vicinity of an area known as Northwest One/Sursum Corda Cooperative, located between K Street, N.W., M Street, N.W., New Jersey Avenue, N.W., and North Capitol Street, N.W., in the District; or

(2) Any other area that has been approved by the Council pursuant to the New Communities Initiative.

(b) The bonds, which may be issued from time to time, in one or more series, which shall be tax-exempt or taxable as the Mayor shall determine, shall be payable solely from and secured by monies deposited in the Allocated Fund; provided, that the total amount of funds allocated annually to pay debt service on the bonds shall not exceed \$16 million.

(c) The Mayor is authorized to pay from the proceeds of the bonds the costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, bond insurance or other credit enhancement, marketing and selling the bonds, and printing costs and expenses.

(d) The Mayor shall submit and the Council shall approve, by resolution, the amount of bonds that shall be issued at any one time for a project authorized by subsection (a) of this section. Each approval resolution shall state the aggregate principal amount of bonds to be issued, and shall be accompanied by a preliminary development plan that describes the projected construction plan, and includes the following:

(1) A plan that provides for the one-to-one replacement of existing subsidized units, minimizes the displacement of current residents, relocates displaced residents to suitable interim housing within the general neighborhood, and provides the opportunity and the means for the return of the residents to the redeveloped community;

(2) Evidence that the poverty rate in the community is 20% or more;

(3) An executed agreement between the Mayor, or his Authorized Delegate, and one or more designated representatives of the community that acknowledges the immediate and recognizable need for redevelopment of the community;

(4) A plan by which local, community-based developers of affordable housing may be able to achieve at least 40% participation in the redevelopment project;

(5) A preliminary financing plan that includes a financial feasibility analysis that sets forth the proposed sources and uses of funds;

(6) Evidence that 500 or more new or rehabilitated housing units will be developed in the proposed New Communities Initiative neighborhood, and which specifies the total number and the distribution of planned housing units by level of household income; and

(7) An analysis of the synergies to be achieved through the allocation of public and private investments in human and physical capital, and their combined contribution to enhancement of the project's economic feasibility.

(Mar. 16, 1989, D.C. Law 7-202, § 203, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2062(b), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2402(b), 54 DCR 7052.)

Effect of amendments. — D.C. Law 16-192, in subsec. (b), substituted “\$12 million” for “\$6 million”.

D.C. Law 17-20, in subsec. (b), substituted “\$16 million” for “12 million”.

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Delegation of Authority. — Delegation of authority to Acquire Certain Real Estate in the District of Columbia, see Mayor’s Order 2007-81, April 2, 2007 (54 DCR 7810).

Resolutions. — Resolution 16-654, the “Northwest One/Sursum Corda Cooperative Approval Resolution of 2006”, was approved effective June 7, 2006.

Resolution 17-315, the “Barry Farm/Park Chester/Wade Road and Lincoln Heights/Richardson Dwellings New Communities Initiative Combined Emergency Approval Resolution of 2007”, was approved effective July 10, 2007.

Editor’s notes. — For approval of the Northwest One Redevelopment Plan and authorization of the Mayor to exercise eminent domain authority in the area bounded by North Capitol Street, N.E., K Street, N.E., New Jersey Avenue, N.E., and New York Avenue, N.E., see the Northwest One/Sursum Corda Affordable Housing Protection, Preservation and Production Act of 2006, effective November 16, 2006 (D.C. Law 16-188; 53 DCR 6750).

§ 42-2812.04. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this subchapter in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the bonds, including a determination that the bonds may be issued in certificated or book-entry form;

(2) The principal amount of the bonds to be issued and denominations of the bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the bonds, and the maturity date or dates of the bonds;

(5) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;

(8) The time and place of payment of the bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of Chapter 2 of Title 1 and this chapter;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend, which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District (other than real property transfer taxes and deed recordation taxes allocated to the Allocated Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2).

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature. The Mayor's execution and delivery of the bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the bonds.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to § 1-204.90(a)(4).

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(Mar. 16, 1989, D.C. Law 7-202, § 204, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.05. Sale of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the sale of the bonds.

(c) The Mayor is authorized to deliver the executed and sealed bonds, on behalf of the District, for authentication, and, after the bonds have been authenticated, to deliver the bonds to the original purchasers of the bonds upon payment of the purchase price.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the bonds of such series and,

if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

(e) Unit A of Chapter 3 of Title 2 and subchapter III-A of Chapter 3 of Title 47 shall not apply to any contract the Mayor may from time to time enter into for purposes of this subchapter or the Mayor may determine to be necessary or appropriate for purposes of this subchapter to place, in whole or in part:

(1) An investment or obligation of the District as represented by the bonds;

(2) An investment or obligation of program of investment; or

(3) A contract or contracts based on the interest rate, currency, cash flow, or other basis, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread or similar exposure, including, without limitation, interest rate floors, or caps, options, puts, and calls.

The contracts or other arrangements may also be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the bonds. The contracts or other arrangements shall contain whatever payment security, terms, and conditions as the Mayor may consider appropriate and shall be entered into with whatever party or parties the Mayor may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the bonds, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, any other terms and conditions as the Mayor determines. Proceeds of the bonds and any money set aside and pledged to secure payment of the bonds or any contract or other arrangement entered into pursuant to this section may be pledged to and used to service any contract or other arrangement entered into pursuant to this section.

(Mar. 16, 1989, D.C. Law 7-202, § 205, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.06. Payment and security.

(a) Except as otherwise provided in § 42-2812.03(b), the principal of, premium, if any, and interest on, the bonds shall be payable solely from proceeds received from the sale of the bonds, income realized from the

temporary investment of those proceeds, receipts and revenues realized by the District from the Allocated Fund, income realized from the temporary investment of those receipts and revenues prior to payment to the bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the bonds, and other sources of payment (other than the District), all as provided for in the Financing Documents.

(b) Payment of the bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

(Mar. 16, 1989, D.C. Law 7-202, § 206, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.07. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds, the Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents, including those Financing Documents and Closing Documents to which the District is not a party.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

(Mar. 16, 1989, D.C. Law 7-202, § 207, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.08. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this subchapter.

(Mar. 16, 1989, D.C. Law 7-202, § 208, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.09. Limited liability.

(a) The bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taxing power of the District (other than real property transfer taxes and deed recordation taxes), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2).

(b) The bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the bonds.

(c) Nothing contained in the bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the bonds from sources other than those listed for that purpose in § 42-2812.03.

(d) All covenants, obligations, and agreements of the District contained in this subchapter, the bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this subchapter.

(e) No person, including, but not limited to any bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this subchapter, the bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

(Mar. 16, 1989, D.C. Law 7-202, § 209, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.10. District officials.

(a) Except as otherwise provided in § 42-2812.09(e), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this chapter, the bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the bonds, the Financing Documents, or the Closing Documents.

(Mar. 16, 1989, D.C. Law 7-202, § 210, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.11. Maintenance of documents.

Copies of the specimen bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

(Mar. 16, 1989, D.C. Law 7-202, § 211, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

§ 42-2812.12. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

(Mar. 16, 1989, D.C. Law 7-202, § 212, as added Oct. 20, 2005, D.C. Law 16-33, § 2172(c), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2172(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-2812.01.

CHAPTER 28A. LOW-INCOME HOUSING PRESERVATION AND PROTECTION.

Sec.	Sec.
42-2851.01. Short title.	42-2851.06. Section 8 assistance considered income for non-discrimination and minimum income purposes; requirement to accept section 8 vouchers.
42-2851.02. Definitions.	42-2851.07. Penalties for noncompliance.
42-2851.03. Notice required upon opting out; inspection of property; maintenance of contract.	42-2851.08. Determination of qualified areas.
42-2851.04. District's first right to purchase section 8 properties.	
42-2851.05. Relocation services by Mayor.	

§ 42-2851.01. Short title.

This chapter may be referred to as the “Low-Income Housing Preservation and Protections Act of 2002”.

(Apr. 19, 2002, D.C. Law 14-114, § 201, 49 DCR 1468.)

Legislative history of Law 14-114. — Law 14-114, the “Housing Act of 2002”, was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses

of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Editor’s notes. — Section 1101 of D.C. Law 14-114 provided: “The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall promulgate rules to implement this act.”

CASE NOTES

Construction with other laws.

Private landlord’s refusal to rent apartment to prospective tenant who was federally funded rental assistance voucher holder fell within ambit of District of Columbia Human Rights Act (DCHRA), prohibiting source of income housing discrimination, despite technical amendments correcting error that applied intervening legislation to public, rather than private, housing, since amendments merely clari-

fied DCHRA’s long-standing definition of source of income as including federal payments, and intervening District of Columbia Low-Income Housing Preservation and Protection Act (LIHPPA) expressly declared that Housing Choice Voucher Program (HCVP) assistance was source of income under DCHRA. *Bourbeau v. Jonathan Woodner Co.*, 549 F.Supp.2d 78, 2008 U.S. Dist. LEXIS 31574 (2008).

§ 42-2851.02. Definitions.

For the purposes of this chapter, the term:

(1) “Affordable multifamily housing property” means residential real property consisting of 5 or more dwelling units in which, as the result of use restrictions or other covenants, at least 20% of the dwelling units are occupied by very low-income households.

(2)(A) “Area median income” means:

(i) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

(ii) For a household of 3 persons, 90% of the area median income for a household of 4 persons;

(iii) For a household of 2 persons, 80% of the area median income for a household of 4 persons;

(iv) For a household of one person, 70% of the area median income for a household of 4 persons; and

(v) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4).

(B) Any percentage of household income referenced in this chapter (e.g., 80% of household income) shall be determined through a direct mathematical calculation and shall not take into account any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs which it administers.

(3) "District" means District of Columbia.

(4) "Eligible low-income housing development" means a housing development that is an affordable multifamily housing property, a housing accommodation that receives assistance pursuant to a HAP contract, or a housing accommodation certified by the Mayor pursuant to § 47-865.

(5) "Extremely low-income household" means a household consisting of one or more persons with a household income equal to 30% or less of the area median income.

(6) "Federally-assisted housing accommodation" means a housing accommodation that is:

(A) Covered in whole or in part by a contract for project-based assistance under section 8 of the United States Housing Act of 1937, including the following programs:

(i) The new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937, as in effect before October 1, 1983;

(ii) The property disposition program under section 8(b) of the United States Housing Act of 1937;

(iii) The moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) The loan management assistance program under section 8 of the United States Housing Act of 1937; and

(v) The programs authorized by amendments to section 8 of the United States Housing Act of 1937 contained in the Multifamily Assisted Housing Reform and Affordability Act of 1997, approved October 27, 1997 (Pub. L. No. 105-65; 11 Stat. 1344);

(B) Assisted under section 23 of the United States Housing Act of 1937, as in effect before January 1, 1975;

(C) Assisted under the rent supplement program under section 101 of the Housing and Urban Development Act of 1965, approved August 10, 1965 (79 Stat. 451; 12 U.S.C. § 1701s);

(D) Financed under section 202 of the Housing Act of 1959, approved September 23, 1959 (75 Stat. 162; 12 U.S.C. § 1701q);

(E) Financed under section 811 of the National Housing Act, approved November 28, 1990 (104 Stat. 4324; 42 U.S.C. § 8013);

(F) Financed in whole or in part by a mortgage insured or held by the Secretary under section 236 of the National Housing Act, approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. § 1701 et seq.), or subject to an interest reduction payment agreement with the Secretary;

(G) Financed in whole or in part by a below market interest rate mortgage insured or held by the Secretary under section 221(d)(3) of the National Housing Act, pursuant to the proviso in section 221(d)(5) of the National Housing Act; or

(H) Subject to a use agreement under the Flexible Subsidy program established by the Housing and Community Development Amendments of 1978, approved October 31, 1978 (Pub. L. No. 95-557; 92 Stat. 2080).

(7) “HAP contract” means a project-based housing assistance payments contract executed between the owner of an affordable multifamily housing property and the Secretary or a public housing agency pursuant to section 8 of the United States Housing Act of 1937.

(8) “Household income” shall have the same meaning as “household gross income” in § 47-1806.06.

(9) “Housing accommodation” shall have the same meaning as in § 42-3401.03(11).

(10) “Low-income household” means a household consisting of one or more individuals with a household income equal to, or less than, 80% of the area median income and greater than 50% of the area median.

(11) “Qualified area” means a census tract in which the average rent for one bedroom and 2-bedroom apartments exceeds the fair market rent by 25% or more.

(12) “Rental housing” or “rental unit” means that part of a housing accommodation which is rented or offered for rent for residential occupancy, including an apartment, efficiency apartment, room, suite of rooms, and single-family home or duplex, and the land appurtenant to such rental unit or rental housing.

(13) “Secretary” means the Secretary of the United States Department of Housing and Urban Development.

(14) “Tenant” shall have the same meaning as in § 42-3501.03(36)).

(15) “United States Housing Act” means the United States Housing Act of 1937, approved September 1, 1937 (50 Stat. 888; 42 U.S.C. § 1437 et seq.).

(16) “Very low-income household” means a household consisting of one or more individuals with a household income equal to, or less than, 50% of the area median income and greater than 30% of the area median.

(Apr. 19, 2002, D.C. Law 14-114, § 202, 49 DCR 1468; Nov. 13, 2003, D.C. Law 15-39, § 212(a), 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39 rewrote par. (6).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(a) of Housing Notice Temporary Amendment Act of 2002 (D.C. Law 14-181, July 23, 2002, law notification 49 DCR 8275).

For temporary (225 day) amendment of sec-

tion, see § 2(a) of Housing Notice Temporary Amendment Act of 2003 (D.C. Law 15-7, June 5, 2003, law notification 50 DCR 4871).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of the Housing Notice Emergency Amendment Act of 2003 (D.C. Act 15-22, February 24, 2003, 50 DCR 2135).

For temporary (90 day) amendment of section, see § 2(a) of Housing Notice Emergency Amendment Act of 2002 (D.C. Act 14-343, April

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 42-2801.

Short title. — Short title of subtitle B of title II of Law 15-39: Section 211 of D.C. Law 15-39 provided that subtitle B of title II of the act may be cited as the Housing Notice Amendment Act of 2003.

References in text. — Sections 8 and 23 of the United States Housing Act of 1937, referred to in subpars. (A)(i) through (A)(iv) and subpar. (B) of par. (6), are codified to 42 U.S.C. § 1437f and 42 U.S.C. § 1437u, respectively.

National Housing Act, referred to in subpar. (G) of par. (6), are codified to 12 U.S.C. § 1715(d)(3) and (5).

§ 42-2851.03. Notice required upon opting out; inspection of property; maintenance of contract.

(a) The owner of a federally-assisted housing accommodation who intends not to continue participation in the federal assistance program shall transmit to the Mayor, the Director of the Department of Housing and Community Development, the Director of the Department of Consumer and Regulatory Affairs, and the Executive Director of the District of Columbia Housing Authority any notice regarding the intent of the owner not to continue participation that the owner is required to provide to tenants of the housing accommodation or a federal agency under federal law or regulation.

(b)(1) One year before participation in the federal assistance program would expire absent the owner's extension or renewal of participation in the program, the owner of a federally-assisted housing accommodation shall transmit to the Mayor, the Director of the Department of Housing and Community Development, the Director of the Department of Consumer and Regulatory Affairs, and the Executive Director of the District of Columbia Housing Authority a form, promulgated by the Mayor, that shall provide notice of the pending expiration date.

(2) If the owner intends not to continue participation in the federal assistance program, through any means, including termination of a subsidy contract, termination of rental restrictions, or prepayment of a mortgage on an assisted housing development, the notice shall be sent to each assisted tenant household, the Mayor, the Director of the Department of Housing and Community Development, the Director of the Department of Consumer and Regulatory Affairs, and the Executive Director of the District of Columbia Housing Authority, and shall include the following information:

(A) A statement identifying the program under which assistance is provided and stating that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension;

(B) In the event of prepayment, a statement identifying the program under which the mortgage is insured and stating that the owner intends to:

(i) Pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date; or

(ii) Voluntarily cancel the mortgage insurance;

(C) The anticipated date of the termination or prepayment of the federal assistance;

(D) A statement of the possibility that the housing may remain in the federal program after the proposed date of the termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's offer;

(E) A statement that technical assistance may be available through the Department of Housing and Community Development and the address and phone number for that agency; and

(F) A statement containing information about available resources as the Mayor may by regulation require.

(c) An owner of a federally-assisted housing accommodation who does not continue, or intends not to continue, participation in the federal assistance program for the housing accommodation shall be deemed to have consented to reasonable inspection by the Mayor of the housing accommodation and any owner or housing accommodation report on file with United States Department of Housing and Urban Development.

(d) To the extent allowed by federal law, the owner of a federally-assisted housing accommodation that receives assistance pursuant to a HAP contract shall maintain a HAP contract in good standing during the notice period required by this section and during any period during which the Mayor may exercise a right to first refusal.

(e) The one-year notice provision of this section shall not be required with respect to any property which ceased to be a federally assisted housing accommodation prior to April 19, 2002.

(Apr. 19, 2002, D.C. Law 14-114, § 203, 49 DCR 1468; Nov. 13, 2003, D.C. Law 15-39, § 212(b), 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, § 76, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-39 added subsec. (e).

D.C. Law 15-105, in subsec. (d), validated a previously made technical correction.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Housing Notice Temporary Amendment Act of 2002 (D.C. Law 14-181, July 23, 2002, law notification 49 DCR 8275).

For temporary (225 day) amendment of section, see § 2(b) of Housing Notice Temporary Amendment Act of 2003 (D.C. Law 15-7, June 5, 2003, law notification 50 DCR 4871).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(b) of the Housing Notice Emergency Amendment Act of 2003 (D.C. Act 15-22, February 24, 2003, 50 DCR 2135).

For temporary (90 day) amendment of section, see § 2(b) of Housing Notice Emergency Amendment Act of 2002 (D.C. Act 14-343, April 24, 2002, 49 DCR 4294).

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 42-2801.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 42-407.

§ 42-2851.04. District's first right to purchase section 8 properties.

(a) Before an owner of a federally-assisted housing accommodation may sell the housing accommodation, the owner shall provide to the Mayor, and the Mayor shall have, an opportunity to purchase the housing accommodation in

the same manner, and with the same rights, as the opportunity to purchase is provided to tenants and tenant organizations under §§ 42-3404.02 through 42-3404.04 and 42-3404.08. The Mayor shall have 30 days after receiving a written offer of sale from the owner to provide the owner with a written statement of interest. The owner shall afford the Mayor a reasonable period of time, but not less than 120 days after receiving the statement of interest, to negotiate a contract of sale. The Mayor and the owner shall bargain in good faith.

(b) The Mayor may assign the opportunity to purchase provided under subsection (a) of this section to a person that:

(1) Demonstrates the capacity to manage the housing and related facilities for its remaining useful life, either by itself or through a management agent; and

(2) Agrees to obligate itself and any successors in interest to maintain the affordability of the assisted housing development as required by subsection (e) of this section.

(c) The Mayor shall not exercise the opportunity to purchase provided by this section unless the sale of the housing accommodation by the owner would result in the discontinuance of the use of the housing accommodation as a federally-assisted housing accommodation or in the termination of any low-income residency requirements that apply to the housing accommodation.

(d) The income restrictions imposed by the federal assistance program on the dwelling units in the housing accommodation purchased by the Mayor or an assignee of the Mayor shall be maintained by the purchaser for a 30-year period from the date that the purchaser takes possession of the housing accommodation.

(e) This section shall not abrogate the rights of tenants under subchapter IV of Chapter 34 of this title.

(Apr. 19, 2002, D.C. Law 14-114, § 204, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

§ 42-2851.05. Relocation services by Mayor.

(a) If the owner of a federally-assisted housing accommodation discontinues participation in the federal assistance program, the Mayor shall provide relocation services to the tenants of the housing accommodation. The relocation services shall include ascertaining the relocation needs of each household, providing current information on the availability of comparable housing of suitable size, and supplying information concerning federal and District housing programs.

(b) The Mayor may provide relocation assistance payments of up to \$500 per tenant, based on need and pursuant to regulations promulgated by the Mayor.

(c) A relocation assistance payment provided under this section shall not be considered income of the recipient under § 47-1803.02(a)(2).

(Apr. 19, 2002, D.C. Law 14-114, § 205, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

§ 42-2851.06. Section 8 assistance considered income for non-discrimination and minimum income purposes; requirement to accept section 8 vouchers.

(a) The monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937, either directly or through a tenant, shall be considered the income of the tenant for the purposes of any minimum income qualification for a dwelling unit in the housing accommodation.

(b) The monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937, either directly or through a tenant, shall be considered income and a source of income under § 2-1402.21.

(c) The owner of a housing accommodation shall not refuse to rent a dwelling unit to a person because the person will provide his or her rental payment, in whole or in part, through a section 8 voucher.

(Apr. 19, 2002, D.C. Law 14-114, § 206, 49 DCR 1468; Apr. 13, 2005, D.C. Law 15-354, § 59, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354, in subsec. (b), validated previously made technical changes.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 42-1103.

References in text. — Section 8 of the United States Housing Act, referred to in subsecs. (a) and (b), is Act Sept. 1, 1937, c. 896, Title I, § 8, which is classified to 42 U.S.C. § 1437f.

CASE NOTES

Construction with other laws.

Private landlord's refusal to rent apartment to prospective tenant who was federally funded rental assistance voucher holder fell within ambit of District of Columbia Human Rights Act (DCHRA), prohibiting source of income housing discrimination, despite technical amendments correcting error that applied intervening legislation to public, rather than private, housing, since amendments merely clari-

fied DCHRA's long-standing definition of source of income as including federal payments, and intervening District of Columbia Low-Income Housing Preservation and Protection Act (LIHPPA) expressly declared that Housing Choice Voucher Program (HCVP) assistance was source of income under DCHRA. *Bourbeau v. Jonathan Woodner Co.*, 549 F.Supp.2d 78, 2008 U.S. Dist. LEXIS 31574 (2008).

§ 42-2851.07. Penalties for noncompliance.

(a) An owner who fails to comply with a requirement of this chapter shall pay a civil fine of no greater than 5 times the costs and damages caused by the noncompliance.

(b) All fines collected pursuant to this section shall be paid into the Housing Production Trust Fund established by Chapter 28 of this title.

(c) The Mayor may commence enforcement proceedings for any fine not paid within the time period set forth in regulations.

(Apr. 19, 2002, D.C. Law 14-114, § 207, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

§ 42-2851.08. Determination of qualified areas.

Within 30 days after April 19, 2002, the Mayor shall issue a notice of proposed rulemaking setting forth those census tracts which are preliminarily determined to be qualified areas. The Mayor shall issue a notice of final rulemaking setting forth those census tracts which are determined to be qualified areas within 75 days after April 19, 2002. The Mayor shall make a map of the qualified areas, a list of the census tracts determined to be qualified areas, and the boundaries of those tracts available on the Internet. The Mayor shall review and, if necessary, update the map, list, and boundaries at least once every 2 years.

(Apr. 19, 2002, D.C. Law 14-114, § 208, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2851.01.

CHAPTER 28B. LOW-INCOME HOUSING TAX CREDIT FUND.

Sec.

42-2853.01. Definitions.

42-2853.02. Low-Income Housing Tax Credit Fund.

§ 42-2853.01. Definitions.

For the purposes of this chapter, the term:

(1) "Administrative costs" means the costs of the Department to administer, manage, and monitor the low-income housing tax credit program, including personnel costs, whether incurred before or after April 8, 2005.

(2) "Department" means the Department of Housing and Community Development.

(3) "Developer" means a person or entity that proposes to cause the construction affordable housing using tax credits provided under the Low-Income Housing Tax Credit Program.

(4) "Fund" means the Low-Income Housing Tax Credit Fund established by § 42-2853.02.

(5) "Low-Income Housing Tax Credit Program" means the program authorized by section 42 of the Internal Revenue Code [26 U.S.C. § 42].

(6) "User fee" means a fee charged by the Department to a developer in connection with the Low-Income Housing Tax Credit Program, including application, reservation, allocation, and monitoring fees.

(Apr. 8, 2005, D.C. Law 15-299, § 2, 52 DCR 1502.)

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2 of Low-Income Housing Tax Credit Fund Temporary Act of 2004 (D.C. Law 15-230, March 16, 2005, law notification 52 DCR 3556).

Emergency legislation. — For temporary (90 day) fund provisions, see § 2 of Low-Income Housing Tax Credit Non-Reverting/Non Lapsing Proprietary Fund Emergency Act of 2004 (D.C. Act 15-511, August 2, 2004, 51 DCR 8969).

For temporary (90 day) fund provisions, see § 2 of Low-Income Housing Tax Credit Fund Congressional Review Emergency Act of 2004 (D.C. Act 15-730, January 19, 2005, 52 DCR 1958).

For temporary (90 day) fund provisions, see § 2 of Low-Income Housing Tax Credit Fund

Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-39, February 17, 2005, 52 DCR 3037).

Legislative history of Law 15-299. — Law 15-299, the "Low-Income Housing Tax Credit Fund Act of 2004", was introduced in Council and assigned Bill No. 15-940, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-696 and transmitted to both Houses of Congress for its review. D.C. Law 15-299 became effective on April 8, 2005.

References in text. — Section 42 of the Internal Revenue Code, referred to in par. (5), is classified to 26 U.S.C. § 42.

§ 42-2853.02. Low-Income Housing Tax Credit Fund.

(a) There is hereby established a lapsing fund known as the Low-Income Housing Tax Credit Fund ("Fund"). All monies received shall be used for the uses and purposes set forth in this chapter, subject to authorization by the Council and Congress. Any unexpended monies in the Fund shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(b) Money in the Fund shall be expended by the Department only for administrative costs and for the audit required under subsection (c) of this section.

(c) All income and expenses of the Fund shall be audited annually by the Mayor. The audit report shall be submitted to the Council. The expenses for each audit shall be paid by the Fund.

(Apr. 8, 2005, D.C. Law 15-299, § 3, 52 DCR 1502; Sept. 14, 2011, D.C. Law 19-21, § 9030, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (a), substituted “lapsing fund known as the Low-Income Housing Tax Credit Fund (‘Fund’). All monies received shall be used for the uses and purposes set forth in this chapter, subject to authorization by the Council and Congress. Any unexpended monies in the Fund shall revert to the unrestricted fund balance of the General Fund of the District of Columbia” for “nonlapsing fund separate from the General Fund of the District of Columbia, to be known as the Low-Income Housing Tax Credit Fund (‘Fund’). All user fees collected under this chapter, and all interest earned on those user fees, shall be deposited into the Fund, shall be available without regard to fiscal year limitation, and shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time. The money in the Fund shall be continually available to the Department for the uses and purposes set forth in this chapter, subject to authorization by the Council and Congress”.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see

§ 3 of Low-Income Housing Tax Credit Fund Temporary Act of 2004 (D.C. Law 15-230, March 16, 2005, law notification 52 DCR 3556).

Emergency legislation. — For temporary (90 day) fund provisions, see § 3 of Low-Income Housing Tax Credit Non-Reverting/Non Lapsing Proprietary Fund Emergency Act of 2004 (D.C. Act 15-511, August 2, 2004, 51 DCR 8969).

For temporary (90 day) fund provisions, see § 3 of Low-Income Housing Tax Credit Fund Congressional Review Emergency Act of 2004 (D.C. Act 15-730, January 19, 2005, 52 DCR 1958).

For temporary (90 day) fund provisions, see § 3 of Low-Income Housing Tax Credit Fund Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-39, February 17, 2005, 52 DCR 3037).

Legislative history of Law 15-299. — For Law 15-299, see notes following § 42-2853.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 42-2802.

CHAPTER 28C. COMPREHENSIVE HOUSING TASK FUND.

Sec.

42-2855.01. [Expired].

§ 42-2855.01. Mayor's Comprehensive Housing Task Force Fund established [Expired].

Expired.

(Mar. 2, 2007, D.C. Law 16-192, § 2052, 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, §§ 2092, 2102, 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 2002, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 135, 56 DCR 1117.)

Emergency legislation. — For temporary (90 day) enactments, see §§ 1142, 1143, 2052, and 2055 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactments, see §§ 1142, 1143, 2052, and 2055 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactments, see §§ 1142, 1143, 2052, and 2055 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see §§ 2092, 2102 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 42-1103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Short title. — Short title: Section 2051 of D.C. Law 16-192 provided that subtitle D of title II of the act may be cited as the "Deed Transfer and Recordation Amendment Act of 2006".

Short title: Section 1141 of D.C. Law 16-192 provided that subtitle M of title I of the act may be cited as the "Commercial Linkage Nexus Study Act of 2006".

Short title: Section 2091 of D.C. Law 17-20 provided that subtitle J of title II of the act may be cited as the "Affordable Housing Amendment Act of 2007".

Short title: Section 2101 of D.C. Law 17-20 provided that subtitle K of title II of the act may be cited as the "Fiscal Year 2008 Comprehensive Housing Task Force Fund Authorized Expenditures Amendment Act of 2007".

Short title: Section 2001 of D.C. Law 17-219 provided that subtitle A of title II of the act may be cited as the "Comprehensive Housing Strategy Fund Amendment Act of 2008".

Editor's notes. — Sections 1142 and 1143 of D.C. Law 16-192 provided as follows:

"Sec. 1142. Nexus study.

"To quantify the relationship between commercial development and the need for housing for low and moderate-income workers, the District of Columbia Office of Planning shall commission one or more nexus studies. Each study shall determine the appropriate level of a one-time commercial linkage fee, based on square footage, that will generate revenues from new commercial development sufficient to support low and moderate-income housing needs created by the new development. The initial study shall be commissioned not later than October 15, 2006, and shall be completed not later than April 1, 2007.

"Sec. 1143. Funding for nexus study.

"The nexus study shall be funded from the Mayor's Comprehensive Task Force Fund, from which \$80,000 shall be allocated from the fiscal year budget as provided in section 2052(b)(7)."

Section 2055 of D.C. Law 16-192, as amended by section 203 of D.C. Law 16-223 and section 8(c) of D.C. Law 16-294, provided as follows:

"The following programs shall be funded for fiscal year 2007 from the General Fund of the District of Columbia in the following amounts:

"(1) An amount of \$15,089,443 to the Office of Unified Communications, which shall be allocated for personnel and nonpersonal costs of the E-911 system;

"(2) An amount of \$508,200 to fund the fiscal effect and implementation of the Health Care

Benefits Expansion Amendment Act of 2006, effective April 4, 2006 (D.C. Law 16-82; D.C. Official Code § 32-706 et seq.);

"(3) An amount of \$379,400 to the Office of the Deputy Mayor for Planning and Economic Development to be granted to the Tudor Place Historic House and Garden for capital restoration funding;

"(4) An amount of \$200,000 to the Commission on Arts and Humanities to be granted to the Washington D.C. Jewish Community Center's Center for the Arts;

"(5) An amount of \$250,000 to the Department of Health to be granted to the Capital Breast Care Center;

"(6) An amount of \$50,000 to the Department of Health to be granted to the D.C. Assembly on School-Based Health Care to fund school-based health programs;

"(7) An amount of \$400,000 to the Department of Youth Rehabilitation Services to be granted to Peaceholics to assist in providing comprehensive, wrap-around services for at-risk youth and their families in the District of Columbia;

"(8) An amount of \$100,000 to the Department of Youth Rehabilitation Services to be granted to Positive Choices to provide educational, athletic, emotional, and a socially enriched environment for economically disadvantaged inner-city youth;

"(9) An amount of \$50,000 to the Office on Aging to be granted to Saint Mary's Court Senior Living Facility to assist its Quality of Life Program, which provides support services, classes, community, and social activities for its residents;

"(10) An amount of \$50,000 to the Department of Human Services to be granted to Bread for the City to assist in funding programs offered including meals, housing, legal assistance, and job placement;

"(11) An amount of \$50,000 to the Department of Human Services to be granted to D.C. Central Kitchen to assist in supplemental food purchases used to provide daily meals to residents at all District of Columbia shelters;

"(12) An amount of \$50,000 to the Department of Parks and Recreation to be used as one-time capital funding for the Spanish Steps project;

"(13) An amount of \$14 million to the District of Columbia Housing Authority for operations, rent supplements, and emergency assistance;

"(14) An amount of \$7 million to the Metropolitan Police Department to hire new police officers; provided, that:

"(A) The Metropolitan Police Department maintain the total percent of sworn officers assigned to the police districts as existed on June 11, 2006;

"(B) The additional police officers shall be allocated evenly across all 7 police districts for patrol duty, shall be in addition to current patrol staffing levels, and shall be assigned to foot patrol, bike patrol, and scooter patrol, mounted patrol, and Segway (or other electric personal assistive mobility device) patrol; and

"(C) The Chief of Police shall provide to the Council monthly reports on deployment and Metropolitan Police Department strength by the 15th of each month

"(15) An amount of \$257,000 to the fund the fiscal effect and implementation of subtitle B of Title IV;

"(16) An amount of \$89,5000 to fund the fiscal effect and implementation of subtitle I of Title I;

"(17) An amount of \$143,882 to the Department of Parks and Recreation for Boys and Girls Club programs;

"(18) An amount of \$8,780,300 to fund the fiscal effect of subtitle II-L; and

"(19) An amount of \$150,000 to fund the earned income tax credit community outreach; and

"(20) An amount of \$124,000 to the Board of Real Property Assessments and Appeals to be allocated as follows:

"(A) The amount of \$9,000 for computer upgrades;

"(B) The amount of \$45,000 for records management conversion to a web-based system;

"(C) The amount of \$20,000 for centralized digital recording;

"(D) The amount of \$35,000 to increase Board member reimbursements to \$35 per hour; and

"(E) The amount of \$15,000 for nonlegal administrative support staff."

Pursuant to subsection (d) of this section, added by D.C. Law 17-219, this section expired on April 1, 2009.

CHAPTER 28D. DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT UNIFIED FUND.

Sec.		munity	Development	Unified
42-2857.01.	Department of Housing and Com-	Fund.		

§ 42-2857.01. Department of Housing and Community Development Unified Fund.

(a) There is established as a nonlapsing fund the Department of Housing and Community Development Unified Fund ("Unified Fund"), to be administered by the Department of Housing and Community Development.

(b) All funds deposited into the Unified Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) Funds deposited into the Unified Fund shall be used for the following purposes:

(1) To provide financial assistance to low-income and moderate-income residents of the District so that they may obtain or maintain affordable housing;

(2) To assist low-income and moderate-income residents in making down payments on homes within the District;

(3) To assist low-income and moderate-income residents in making share payments or other payments to housing cooperatives or condo associations within the District;

(4) To provide financial assistance to developers to acquire real property for the provision of affordable housing;

(5) To provide funding for the design, installation, and renovation of site improvements to be located on property to be developed or rehabilitated as affordable housing;

(6) To provide funding for private for-profit and not-for-profit developers to facilitate the development of affordable housing;

(7) To provide funding for property maintenance facilities at affordable housing developments;

(8) To provide funding for the Department of Housing and Community Development ("DHCD") to reclaim properties that have received notice of foreclosure in cases where DHCD has subordinated liens;

(9) To provide affordable financing to low-income and moderate-income residents to correct basic housing defects and ensure long-term livability;

(10) To develop programs to encourage property owners to rehabilitate and occupy their abandoned or deteriorated residential properties;

(11) To facilitate DHCD's acquisition, disposition, and rehabilitation of vacant and deteriorated properties when property owners fail to maintain the properties;

(12) To facilitate the development of affordable housing generally;

(13) To provide funding for other affordable housing purposes, as determined by the Director of DHCD in furtherance of DHCD's mission;

(14) To provide one-time funding for enhancements for the Rental Housing Commission;

(15) To provide funding to support the housing needs of veterans; and

(16) To provide funding to assist tenants evicted under § 42-3505.01.

(d) Not more than 20% of the funds deposited into the Unified Fund may be used to pay project-delivery costs.

(e) The following funds shall be deposited into the Unified Fund, beginning on October 1, 2008:

(1) All revenue derived from lease payments from loans and other proceeds received under the Land Acquisitions for Housing Development Opportunities Program, established under the authority of subchapter I of Chapter 10 of Title 6;

(1A) All revenue derived from the fees collected pursuant to § 42-3402.05a, for processing condominium and cooperative conversions and for other services provided by the Department of Housing and Community Development under Chapter 34 of this title [§ 42-3401.01 et seq.];

(1B) All revenue derived from the fees collected pursuant to § 42-1904.03(d);

(2) All revenue derived from repayments and other proceeds from the following programs, funding sources, and accounts maintained by DHCD:

(A) Rehabilitation Repayment account;

(B) Low Income Housing Tax Credit Fee Collection;

(C) Home Again Revolving Fund;

(D) Portal Sites; and

(E) Any other DHCD programs created by regulation, as determined by the Director; and

(3) All other sources of revenue as the Council may determine by act.

(f) No revenue from any federal funding source nor any income derived from any federal funding source shall be deposited into the Unified Fund.

(g) The Director shall distribute funds from the Unified Fund in accordance with DHCD's annual action plan, budget projections, and performance goals that are directed towards creating affordable housing and community development.

(h) On October 31, 2009, and annually thereafter, DHCD shall submit to the Council a report that describes all programs, activities, and projects undertaken by DHCD using funds allocated from the Unified Fund.

(Aug. 16, 2008, D.C. Law 17-219, § 2009, 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 2181, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2104, 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-111, in subsec. (c), deleted "and" from the end of par. (12); substituted a semicolon for a period at the end of par. (13), and added pars. (14) to (16).

D.C. Law 18-223 added pars. (e)(1A) and (e)(1B).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2181 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 2181 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2104 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned

Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

Short title. — Short title: Section 2008 of D.C. Law 17-219 provided that subtitle D of title II of the act may be cited as the “Department of Housing and Community Development Unified Fund Establishment Act of 2008”.

Short title: Section 2180 of D.C. Law 18-111 provided that subtitle S of title II of the act may be cited as the “Rental Housing Commission Enhancement Amendment Act of 2009”.

CHAPTER 29. METROPOLITAN POLICE HOUSING ASSISTANCE AND COMMUNITY SAFETY PROGRAM.

Sec.

42-2901. Definitions.

42-2902. Rental assistance.

Sec.

42-2903. Community police presence.

§ 42-2901. Definitions.

For the purposes of this chapter, the term:

(1) "Department" means the District of Columbia Department of Public and Assisted Housing Development.

(2) "First-time homebuyer" means a purchaser who has no ownership interest in a principal residence at any time during the 3-year period ending on the date of the application for assistance, but includes an applicant who has divorced or separated during the 3-year period where a formal settlement did not convey an ownership interest in a principal residence which had been jointly owned.

(3) "Housing unit" means any room or group of rooms forming a single-family residential unit, including a semi-detached condominium, cooperative, or semi-detached or detached home that is intended to be used or used for living, sleeping, and the preparation and eating of meals by human occupants.

(4) "Police officer" means officers of all ranks employed by the District of Columbia Metropolitan Police Department.

(Feb. 23, 1994, D.C. Law 10-70, § 2, 40 DCR 7575.)

Prior Codifications. — 1981 Ed., § 45-2231.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993 (D.C. Law 10-63, October 8, 1993, law notification 40 DCR 1).

Legislative history of Law 10-70. — D.C. Law 10-70, the "Metropolitan Police Housing Assistance Program and Community Safety Act of 1993," was introduced in Council and assigned Bill No. 10-325, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on September 21, 1993, and October 5, 1993, respectively. Signed by the Mayor on October 25, 1993, it was assigned Act No. 10-124 and transmitted to both Houses of Congress for its review. D.C. Law 10-70 became effective on February 23, 1994.

Editor's notes. — Mayor authorized to issue rules: Section 5 of D.C. Law 10-70 provided that the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules within 90 days after February 23, 1994, to implement the provisions of this chapter. The rules shall include, but not be limited to, the following:

Report on cost of tax exemption for police substations: Section 6 of D.C. Law 10-70 provided that six months from February 23, 1994, the Department of Finance and Revenue shall submit a report to the Council on the fiscal impact of providing a real property tax exemption to that portion of the real property belonging to any individual, partnership, or corporation that is provided rent free to the District for use solely by the Metropolitan Police Department as a police substation. The exemption shall be applicable only while the property is used as an active police substation.

Mayor authorized to issue rules: (1) An application procedure for the Metropolitan Police Housing Assistance Program; and.

(2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

Report on fiscal impact: Section 7 of D.C. Law 10-70 provided that at the end of 1 year from the issuance of regulations to implement this chapter, similar incentives for teachers and firefighters shall be considered, and the Department of Finance and Revenue shall submit

a report to the Council on the fiscal impact of these incentives.

§ 42-2902. Rental assistance.

(a) The Department shall offer public housing units at a discounted rental rate to Metropolitan police officers. In assigning public housing units, the Department shall establish a priority for Metropolitan police officers who already reside in the District.

(b) Notwithstanding any other provision of District of Columbia law or regulation, Metropolitan police officers who reside in the District of Columbia may receive discounted rent from private or public housing providers.

(c) All Metropolitan police officers who receive a discounted rent from a private or public housing provider shall notify the Chief of Police of the terms of the discount, and provide a copy of any lease or written agreement detailing the terms of the housing arrangement.

(d) Any discounted rent received by a Metropolitan police officer shall not be considered income for purposes of District of Columbia income tax.

(Feb. 23, 1993, D.C. Law 10-70, § 3, 40 DCR 7575.)

Prior Codifications. — 1981 Ed., § 45-2232.

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993

(D.C. Law 10-63, October 8, 1993, law notification 40 DCR).

Legislative history of Law 10-70. — For legislative history of D.C. Law 10-70, see Historical and Statutory Notes following § 42-2901.

§ 42-2903. Community police presence.

All Metropolitan police officers who reside in the District of Columbia shall be eligible to keep in their possession at all times, overnight and off-duty, the official vehicles assigned for patrol purposes. In assigning police vehicles to be taken by police officers while off-duty, the Chief of Police shall establish priorities based on District residency, dispersion by geographic locations, and other factors the Chief of Police may deem appropriate.

(Feb. 23, 1994, D.C. Law 10-70, § 4, 40 DCR 7575.)

Prior Codifications. — 1981 Ed., § 45-2233.

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993

(D.C. Law 10-63, October 8, 1993, law notification 40 DCR).

Legislative history of Law 10-70. — For legislative history of D.C. Law 10-70, see Historical and Statutory Notes following § 42-2901.

CHAPTER 30. SERVICEMEN'S READJUSTMENT.

Sec.

42-3001. Disability of minority removed; investments by building, building and loan, and savings and loan associations.

Sec.

42-3002. Direct-reduction loans authorized; obligor to be member of lending association.

§ 42-3001. Disability of minority removed; investments by building, building and loan, and savings and loan associations.

(a) The disability of minority of a resident of the District of Columbia who is eligible for guaranty of a loan pursuant to the Servicemen's Readjustment Act of 1944 (58 Stat. 284) and of a minor spouse of any such resident (when acting jointly with such resident) is hereby removed with respect to the incurring of any obligation all or part of which is guaranteed under the provisions of said Act or in conjunction with which a secondary loan is so guaranteed, and with respect to the exercise of the rights of ownership in any property acquired with the proceeds of any such obligation, including the right to sell, convey, lease, encumber, improve or maintain the same and to further obligate himself incident to his exercise of such rights.

(b) Notwithstanding any other provision of law, any building association or building and loan association or any savings and loan association, incorporated or unincorporated, organized and operating under the laws of the District of Columbia, or any federal savings and loan association whose main office is in the District of Columbia, may invest its funds in:

(1) Property-improvement loans insured or insurable under title I of the National Housing Act (12 U.S.C. § 1702 et seq.);

(2) Loans to veterans of World War II when guaranteed in whole or in part by a loan guaranty certificate issued under the Servicemen's Readjustment Act of 1944, including, without limitation, such loans as are unsecured and such loans as are junior to another mortgage or lien upon the security; and

(3) Other secured or unsecured loans for property alteration, repair, or improvement or for home equipment; provided, that no such unsecured loan not insured or guaranteed by a federal agency shall be made in excess of \$2,000; provided further, that the total amount loaned or invested and held in unsecured loans not insured or guaranteed by a federal agency as provided for under this subsection at any 1 time shall not exceed 15% of the association's assets.

(May 1, 1946, 60 Stat. 159, ch. 245, § 2.)

Prior Codifications. — 1981 Ed., § 45-2301.

1973 Ed., § 45-1701.

References in text. — The Servicemen's Readjustment Act of 1944, referred to in subsections (a) and (b)(2) of this section, is the Act

of June 22, 1944, 58 Stat. 284, codified primarily as former 38 U.S.C. § 693 et seq., and repealed by the Act of Sept. 2, 1958, 72 Stat. 1273, Pub. L. 85-857. See now 38 U.S.C. § 3701 et seq.

§ 42-3002. Direct-reduction loans authorized; obligor to be member of lending association.

Any building association, building and loan association, or savings and loan association organized and operating under the laws of the District of Columbia is authorized to lend money to veterans of World War II and others upon the security of a first deed of trust or first mortgage upon real estate, to be repaid in monthly or quarterly payments to be applied first to interest and the balance to principal until the indebtedness is paid in full, and without subscription to, or ownership of any shares, and such loans shall be known as direct-reduction loans. Direct-reduction-loan borrowers, and all persons assuming or obligated under direct-reduction loans made or held by such association shall be members of the association, and at all meetings of the members of the association, each borrower or each obligor upon a direct-reduction loan shall be entitled to 1 vote as such member.

(May 1, 1946, 60 Stat. 159, ch. 245, § 3.)

Prior Codifications. — 1981 Ed., § 45-2302. 1973 Ed., § 45-1702.

SUBTITLE VI. NUISANCE PROPERTY.

CHAPTER 31. DRUG-, FIREARM-, OR PROSTITUTION-RELATED NUISANCE ABATEMENT.

Sec.	Sec.
42-3101. Definitions.	42-3109. Evidence of reputation.
42-3102. Action to abate.	42-3110. Relief.
42-3102.01. Authority to obtain law enforcement records.	42-3111. Damages.
42-3103. Complaint.	42-3111.01. Drug- or Prostitution-Related Nuisance Abatement Fund.
42-3104. Preliminary injunction.	42-3112. Violation of injunction or abatement order.
42-3105. Protection of witnesses.	42-3113. Interpretation.
42-3106. Conviction not required.	42-3114. Availability of other remedies.
42-3107. Security.	
42-3108. Burden of proof.	

§ 42-3101. Definitions.

For the purpose of this chapter, the term:

(1) "Adverse impact" means the presence of any one or more of the following conditions:

(A) Diminished real property value that is related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property;

(B) Increased fear of residents to walk through or in public areas, including sidewalks, streets, and parks, due to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia, or violence stemming therefrom;

(C) Increased volume of vehicular and pedestrian traffic to and from the property that is related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property;

(D) An increase in the number of ambulance or police calls to the property that are related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia, or to violence stemming therefrom;

(E) Bothersome solicitations or approaches by persons wishing to engage in prostitution or to sell controlled substances or drug paraphernalia on or near the property;

(F) The presence, use, or display of firearms at or near the property;

(G) Investigative purchases of controlled substances or drug paraphernalia, the presence, use, or display of firearms, or investigative actions relating to prostitution by undercover law enforcement officers at or near the property;

(H) Arrests of persons on or near the property for criminal conduct relating to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia;

(I) Search warrants served or executed at the property relating to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia;

(J) A substantial number of complaints made to law enforcement and other government officials about alleged illegal activity associated with prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property; or

(K) The presence, use, display, or discharge of a firearm at the property.

(2) “Community-based organization” means any group, whether unincorporated or incorporated, affiliated with or organized for the benefit of one or more communities or neighborhoods, of defined geographic boundaries, containing the drug-, firearm-, or prostitution-related nuisance, or any group organized to benefit the quality of life in a residential area containing the alleged drug-, firearm-, or prostitution-related nuisance.

(3) “Controlled substance” means any of the controlled substances as defined in § 48-901.02(4).

(4) “Drug paraphernalia” means drug paraphernalia, as defined in § 48-1101(3).

(5) “Drug-, firearm-, or prostitution-related nuisance” means:

(A) Any real property, in whole or in part, used or intended to be used to facilitate any violation of Chapter 9 of Title 48;

(B) Any real property, in whole or in part, used, or intended to be used, to facilitate prostitution, or that is used or intended to be used to unlawfully store or otherwise keep one or more firearms, or that is used or intended to be used for the sale or manufacture of controlled substances or drug paraphernalia, that has an adverse impact on the community.

(C) Any real property, in whole or in part, used or intended to be used to facilitate any violation of §§ 22-2701, 22-2703, and 22-2723, § 22-2701.01, § 22-2704, §§ 22-2705 to 22-2712, and § 22-2722.

(5A) “Firearm” shall have the same meaning as provided in § 7-2501.01(9), except that it shall not include the lawful possession of a firearm by a person who is licensed or otherwise permitted by law to possess the weapon.

(6) “Manufacturing” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin or independent means of chemical synthesis, including the packaging or repackaging of the drug or labeling or relabeling of its container.

(7) “Owner” means the individual, corporation, partnership, trust association, joint venture, or any other business entity, and the respective agents of such individuals or entities, in whom is vested all or any part of the title to the property alleged to be a drug-, firearm-, or prostitution-related nuisance.

(8) “Property” means tangible real property, or any interest in real property, including an interest in any leasehold, license or real estate, such as any house, apartment building, condominium, cooperative, office building, storage, restaurant, tavern, nightclub, warehouse, park, median, and the land extending to the boundaries of the lot upon which such structure is situated, and anything growing on, affixed to, or found on the land.

(8A) “Prostitution” means prostitution as defined in any provision of §§ 22-2701, 22-2703, and 22-2723, § 22-2704, §§ 22-2705 to 22-2712, and § 22-2722. .

(9) "Tenant" means a person who resides in or occupies real property owned by another person pursuant to a lease agreement, whether written or oral, or pursuant to a tenancy at will or sufferance at common law.

(Mar. 26, 1999, D.C. Law 12-194, § 2, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(a), 53 DCR 1050; Mar. 2, 2007, D.C. Law 16-191, § 112, 53 DCR 6794; Nov. 6, 2010, D.C. Law 18-259, § 7(a), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3301.

Effect of amendments. — D.C. Law 16-81, in subpar. (1)(A), substituted "value that is related to prostitution or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near" for "value which is related to the use, sale, or manufacture of controlled substances or drug paraphernalia in and around"; subpar. (1)(B), substituted "due to prostitution or the use" for "due to the use"; in subpar. (1)(C), substituted "that is related to prostitution or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near" for "which is related to the use, sale, or manufacture of controlled substances or drug paraphernalia in and around"; in subpar. (1)(D), substituted "that are related to prostitution or the use" for "which are related to the use"; in subpar. (1)(E), substituted "wishing to engage in prostitution or to sell" for "wishing to sell"; in subpar. (1)(G), substituted "paraphernalia or investigative actions relating to prostitution by" for "paraphernalia by"; in subpar. (1)(H), substituted "relating to prostitution or the use" for "relating to the use"; in subpar. (1)(I), substituted "relating to prostitution or the use" for "relating to the use"; in subpar. (1)(J), substituted "associated with prostitution or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near" for "associated with the use, sale, or manufacture of controlled substances or drug paraphernalia in and around"; in par. (2), substituted "drug or prostitution-related" for "drug related", and substituted "drug or prostitution-related" for "drug-related"; in the lead-in language of par. (5), substituted "Drug or prostitution-related" for "Drug-related"; in subpar. (5)(B), struck "or" before "intended", substituted "facilitate the use, sale, distribution, possession, storage, transportation, or manufacture of any controlled substance or drug paraphernalia which has an adverse impact on the community" and inserted "facilitate prostitution or the use, sale, or manufacture of controlled substances or drug paraphernalia that has an adverse impact on the community"; added subpar. (5)(C); in par. (7), substituted "drug or prostitution-related" for "drug-related"; and added par. (8A).

D.C. Law 16-191, in pars. (5)(A) and (B), validated previously made technical corrections.

D.C. Law 18-259, in par. (1)(A), substituted "value that is related to prostitution, the presence, use, or display of firearms," for value that is related to prostitution"; in par. (1)(B), substituted "due to prostitution, the presence, use, or display of firearms," for "due to prostitution"; in par. (1)(C), substituted "that is related to prostitution, the presence, use, or display of firearms," for "that is related to prostitution"; in pars. (1)(D), substituted "that are related to prostitution, the presence, use, or display of firearms," for "that are related to prostitution"; in par. (1)(F), substituted "The presence, use, or display of firearms" for "The display of dangerous weapons"; in par. (1)(G), substituted "controlled substances or drug paraphernalia, the presence, use, or display of firearms," for "controlled substances or drug paraphernalia"; in par. (1)(H), substituted "relating to prostitution, the presence, use, or display of firearms," for "relating to prostitution"; in par. (1)(I), substituted "relating to prostitution, the presence, use, or display of firearms, or the use" for "relating to prostitution or the use"; in par. (1)(J), substituted "associated with prostitution, the presence, use, or display of firearms," for "associated with prostitution"; in par. (1)(K), substituted "The presence, use, display, or discharge of a firearm at the property" for "The display discharge of a firearm at the property"; in par. (2), substituted "drug-, firearm-, or prostitution-related" for "drug or prostitution-related" the two places it appears; in par. (5), substituted "Drug-, firearm-, or prostitution-related" for "Drug or prostitution-related" in the lead-in language, and rewrote subsec. (B); added par. (5A); and, in par. (7), substituted "drug-, firearm-, or prostitution-related" for "drug or prostitution-related". Prior to amendment, par. (5)(B) read as follows: "(B) Any real property, in whole or in part, used, or intended to be used, to facilitate prostitution or the use, sale, or manufacture of controlled substances or drug paraphernalia that has an adverse impact on the community; or"

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 15 of Drug-Related Nuisance Abatement Temporary Act of 1998 (D.C. Law 12-178, March 26, 1999, law notification 45 DCR 3404).

Emergency legislation. — For temporary addition of this chapter, consisting of §§ 45-3301 through 45-3314 1981 Ed., see §§ 2-14 of

the Drug-Related Nuisance Abatement Emergency Act of 1998 (D.C. Act 12-395, October 4, 1998, 45 DCR 4648), §§ 2-14 of the Drug-Related Nuisance Abatement Congressional Review Emergency Act of 1998 (D.C. Act 12-476, October 28, 1998, 45 DCR 8001), and §§ 2-14 of the Drug-Related Nuisance Abatement Second Congressional Review Emergency Act of 1998 (D.C. Act 12-545, December 24, 1998, 45 DCR 490).

Legislative history of Law 12-194. — Law 12-194, the “Drug-Related Nuisance Abatement Act of 1998,” was introduced in Council and assigned Bill No. 12-519, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 7, 1998 and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-470 and transmitted to both Houses of Congress for its review. D.C. Law 12-194 became effective on March 26, 1999.

Legislative history of Law 16-81. — Law 16-81, the “Nuisance Abatement Reform

Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-80 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-267 and transmitted to both Houses of Congress for its review. D.C. Law 16-81 became effective on April 4, 2006.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

Legislative history of Law 18-259. — Law 18-259, the “Community Impact Statement Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-549, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on May 4, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 28, 2010, it was assigned Act No. 18-446 and transmitted to both Houses of Congress for its review. D.C. Law 18-259 became effective on November 6, 2010.

CASE NOTES

Weight and sufficiency of evidence.

Evidence supported determination that defendant’s property was drug or prostitution related nuisance, in violation of District of Columbia law, supporting probable cause to seize property prior to forfeiture; necessary showing of adverse impact on community was shown through numerous arrests for purchases

of controlled substances and other criminal activities related to drugs, property had been searched for drugs pursuant to warrant, and there had been discharge of firearm at property. *United States v. 1923 Rhode Island Ave.*, 522 F.Supp.2d 204, 2007 U.S. Dist. LEXIS 86605 (1923).

§ 42-3102. Action to abate.

(a) Wherever there is reason to believe that a drug-, firearm-, or prostitution-related nuisance exists, the United States Attorney for the District of Columbia, the Corporation Counsel for the District of Columbia, or any community-based organization may file an action in the Superior Court of the District of Columbia to abate, enjoin, and prevent the drug-, firearm-, or prostitution-related nuisance.

(b) Such actions shall be commenced by the filing of a complaint in the Civil Branch of the Superior Court of the District of Columbia against any person alleging the facts constituting the drug-, firearm-, or prostitution-related nuisance.

(c) Such actions shall be in equity and shall be tried without a jury.

(Mar. 26, 1999, D.C. Law 12-194, § 3, 45 DCR 7978; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3302.

Effect of amendments. — D.C. Law 16-81

substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-,

or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For

legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3102.01. Authority to obtain law enforcement records.

Upon request by the Attorney General for the District of Columbia, the United States Attorney for the District of Columbia may provide information related to a drug-, firearm-, or prostitution-related property that has been obtained from a law enforcement agency.

(Mar. 26, 1999, D.C. Law 12-194, § 3a, as added Apr. 4, 2006, D.C. Law 16-81, § 3(c), 53 DCR 1050.)

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

§ 42-3103. Complaint.

(a) The complaint or an affidavit attached thereto shall describe the adverse impact of the drug-, firearm-, or prostitution-related nuisance upon the surrounding community.

(b) The complaint shall contain a description of attempts made by the plaintiff to notify the owner of the property on which the drug-, firearm-, or prostitution-related nuisance is situated about the drug-, firearm-, or prostitution-related nuisance and the resulting adverse impact. No complaint shall be filed unless a reasonable attempt at notice to the owner of the property on which the alleged drug-, firearm-, or prostitution-related nuisance is situated is made no later than 14 days prior to the filing of the complaint. This notice requirement may be satisfied either by a mailing to the last known mailing address of the owner or by posting a conspicuous notice at the property stating the general nature of the drug-, firearm-, or prostitution-related nuisance.

(c) When an action is brought pursuant to this chapter by a community-based organization, the complaint shall be supported by at least 1 person residing, either as a tenant or otherwise, or owning real property within 3000 feet of the property alleged to be a drug-, firearm-, or prostitution-related nuisance. Said support shall be in the form of an affidavit testifying to the fact that the affiant’s residence is within 3000 feet of the alleged drug-, firearm-, or prostitution-related nuisance, that the affiant has witnessed the activities alleged to constitute a drug-, firearm-, or prostitution-related nuisance, and that the affiant is aware of an adverse impact on the community stemming from the alleged drug-, firearm-, or prostitution-related nuisance.

(d) A copy of the summons and complaint shall be served upon the defendant at least 5 business days prior to the first hearing on the action. Service shall be made in accordance with the Rules of the Superior Court of the

District of Columbia or by posting a conspicuous notice at the property indicating the nature of the proceedings, a copy of the summons, and the time and place of the hearing. If service is made by posting at the property, a copy of the summons and complaint shall be sent, by first class mail, postage prepaid, to the last known mailing address, if any, of the defendant. If the defendant is not the owner of the property, a copy of the summons and complaint shall be mailed to the last known mailing address of the owner.

(Mar. 26, 1999, D.C. Law 12-194, § 4, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3303.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3104. Preliminary injunction.

(a) Upon the filing of a complaint to abate the drug-, firearm-, or prostitution-related nuisance, the court shall hold a hearing on the motion for a preliminary injunction, within 10 business days of the filing of such action. If it appears, by affidavit or otherwise, that there is a substantial likelihood that the plaintiff will be able to prove at trial that a drug-, firearm-, or prostitution-related nuisance exists, the court may enter an order preliminarily enjoining the drug-, firearm-, or prostitution-related nuisance and granting such other relief as the court may deem appropriate, including those remedies provided in § 42-3110. A plaintiff need not prove irreparable harm to obtain a preliminary injunction. Where appropriate, the court may order a trial of the action on the merits to be advanced and consolidated with the hearing on the motion for preliminary injunction.

(b) This section shall not be construed to prohibit the application for or the granting of a temporary restraining order, or other equitable relief otherwise provided by law.

(Mar. 26, 1999, D.C. Law 12-194, § 5, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3304.

Effect of amendments. — D.C. Law 16-81

substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-,

or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For

legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3105. Protection of witnesses.

If proof of the existence of the drug-, firearm-, or prostitution-related nuisance depends, in whole or in part, upon affidavits of witnesses who are not law enforcement officers, the court in its discretion may issue orders to protect those witnesses, including, but not limited to, placing the complaint and supporting affidavits under seal.

(Mar. 26, 1999, D.C. Law 12-194, § 6, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3305.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3106. Conviction not required.

A previous conviction of the defendant, or any tenant or owner of the property, shall not be required to demonstrate a drug-, firearm-, or prostitution-related nuisance.

(Mar. 26, 1999, D.C. Law 12-194, § 7, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3306.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3107. Security.

No security bond shall be required to issue a preliminary injunction or temporary restraining order sought by the United States Attorney for the District of Columbia or by the Corporation Counsel. Otherwise, the court may require a security bond to issue a preliminary injunction or temporary restraining order.

(Mar. 26, 1999, D.C. Law 12-194, § 8, 45 DCR 7982.)

Prior Codifications. — 1981 Ed., § 45-3307.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

§ 42-3108. Burden of proof.

The plaintiff must establish that a drug-, firearm-, or prostitution-related nuisance exists by a preponderance of the evidence. Once a reasonable attempt at notice is made pursuant to § 42-3103, the owner of the property shall be presumed to have knowledge of the drug-, firearm-, or prostitution-related nuisance. A plaintiff is not required to make any further showing that the owner knew, or should have known, of the drug-, firearm-, or prostitution-related nuisance to obtain relief under § 42-3110 or § 42-3111.

(Mar. 26, 1999, D.C. Law 12-194, § 9, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3308.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3109. Evidence of reputation.

In an action brought under this chapter, evidence of general reputation of the property or tenants is admissible for the purpose of proving a drug-, firearm-, or prostitution-related nuisance, and for the purpose of proving the knowledge of the defendant of the nuisance.

(Mar. 26, 1999, D.C. Law 12-194, § 10, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3309.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3110. Relief.

(a) If the existence of a drug-, firearm-, or prostitution-related nuisance is found, the court shall enter an order permanently enjoining, abating, and preventing the continuance or recurrence of the nuisance. In order to effectuate fully the equitable remedy of abatement, such order may include damages as provided in § 42-3111. The court may grant declaratory relief or any other relief deemed necessary to accomplish the purposes of the judgment. The court may retain jurisdiction of the case for the purpose of enforcing its orders. A drug-, firearm-, or prostitution-related nuisance is a nuisance per se requiring abatement as provided under subsection (b) of this section.

(b) Any order issued under this section may include the following relief:

(1) Assessment of reasonable attorney fees and costs to the prevailing party;

(2) Ordering the owner to make repairs upon the property;

(3) Ordering the owner to make reasonable expenditures upon the property, including the installation of secure locks, hiring private security personnel, increasing lighting in common areas, and using videotaped surveillance of the property and adjacent alleys, sidewalks, or parking lots;

(4) Ordering all rental income from the property to be placed in an escrow account with the court for up to 90 days or until the drug-, firearm-, or prostitution-related nuisance is abated;

(5) Ordering all rental income for the property transferred to a trustee, to be appointed by the court, who shall be empowered to use the rental income to make reasonable expenditures related to the property in order to abate the drug-, firearm-, or prostitution-related nuisance;

(6) Ordering the property vacated, sealed, or demolished; or

(7) Any other remedy which the court, in its discretion, deems appropriate.

(c) In fashioning an order under this section, the court shall consider, without limitation, the following factors:

(1) The extent and duration of the drug-, firearm-, or prostitution-related nuisance and the severity of the adverse impact on the community;

(2) The number of people residing at the property;

(3) The proximity of the property to other residential structures;

(4) The number of times the property has been cited for housing code or health code violations;

(5) The number of times the owner or tenant has been notified of drug-, firearm-, or prostitution-related problems at the property;

(6) Prior efforts or lack of efforts by the defendant to abate the drug-, firearm-, or prostitution-related nuisance;

(7) The involvement of the owner or tenant in the drug-, firearm-, or prostitution-related nuisance;

(8) The costs incurred by the jurisdiction or by the community-based organization in investigating, correcting, or attempting to correct the drug-, firearm-, or prostitution-related nuisance;

(9) Whether the drug-, firearm-, or prostitution-related nuisance was continuous or recurring;

(10) The economic or financial benefit accruing or likely to accrue to the defendant as a result of the conditions constituting the drug-, firearm-, or prostitution-related nuisance; or

(11) Any other factor the court deems relevant.

(d) In fashioning an order under this section, the court shall not consider the lack of action by other property owners, tenants, or third parties to abate the drug-, firearm-, or prostitution-related nuisance.

(Mar. 26, 1999, D.C. Law 12-194, § 11, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3310.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3111. Damages.

In addition to equitable relief granted under this chapter, the plaintiff may request, and the court in its discretion may order damages for each day the drug-, firearm-, or prostitution-related nuisance is unabated since the date the defendant first received notice of the drug-, firearm-, or prostitution-related nuisance as provided in § 42-3103, or knew or should have known of the existence of the drug-, firearm-, or prostitution-related nuisance, whichever is earlier. Such damages shall be payable to the plaintiff, or, in the case of an action by the United States Attorney for the District of Columbia or by the Corporation Counsel, to the Drug-, Firearm-, or Prostitution-Related Nuisance Abatement Fund established by § 42-3111.01. No other damages are recoverable under this chapter.

(Mar. 26, 1999, D.C. Law 12-194, § 12, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), (d), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3311.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”; and substituted “to the Drug-, Firearm-, or Prostitution-Related Nuisance Abatement Fund established by § 42-3111.02” for “to the General Fund of the District of Columbia”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See

Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3111.01. Drug- or Prostitution-Related Nuisance Abatement Fund.

(a) There is hereby established a Drug-, Firearm-, or Prostitution-Related Nuisance Abatement Fund (“Fund”), which shall be separate from the General Fund of the District of Columbia. The assets of the Fund shall not exceed \$2 million at any time. The Fund shall consist of damages collected in cases brought pursuant to this chapter and any additional funds Congress may make available to the Fund. Such funds shall be deposited in the Fund upon receipt. The funds in the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year, but shall remain available for the purposes set forth in this section, subject to authorization and appropriation by Congress. Any balance in excess of \$2 million shall be deposited in the General Fund of the District of Columbia.

(b) The funds in the Fund shall be available for use by the Attorney General to carry out the enforcement of this chapter, including all costs reasonably related to prosecuting cases and conducting investigations pursuant to this chapter.

(c) Disbursements made from the Fund to the Office of Attorney General or other appropriate agency shall be used to supplement and not supplant the Office of the Attorney General’s appropriated operating budget.

(Mar. 26, 1999, D.C. Law 12-194, § 12a, as added Apr. 4, 2006, D.C. Law 16-81, § 3(e), 53 DCR 1050.)

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

§ 42-3112. Violation of injunction or abatement order.

(a) A violation of any court order issued under this chapter is punishable as a contempt of court.

(b) Upon finding that a defendant has willfully violated an order issued under this chapter, the court may issue any additional orders necessary to abate the drug-, firearm-, or prostitution-related nuisance.

(c) Upon motion, the court may vacate an order or judgment of abatement if the owner of the property satisfies the court that the drug-, firearm-, or prostitution-related nuisance has been abated for 90 days prior to the motion,

corrects all housing code and health code violations on the property, and deposits a bond in an amount to be determined by the court, which shall be in an amount reasonably calculated to ensure continued abatement of the nuisance. Any bond posted under this subsection shall be forfeited immediately if the drug-, firearm-, or prostitution-related nuisance recurs during the 2-year period following the date on which an order under this section is entered. At the close of 2 years following the date on which an order under this section is entered, the bond shall be returned.

(Mar. 26, 1999, D.C. Law 12-194, § 13, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3312.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3113. Interpretation.

This chapter shall be construed liberally in accordance with its remedial purposes. The definition of a drug-, firearm-, or prostitution-related nuisance shall not be subject to any restrictions or limitations upon public or private nuisance actions at common law. This action is civil in nature and none of its provisions should be interpreted as punishment.

(Mar. 26, 1999, D.C. Law 12-194, § 14, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(b), 53 DCR 1050; Nov. 6, 2010, D.C. Law 18-259, § 7(b), 57 DCR 5591.)

Prior Codifications. — 1981 Ed., § 45-3313.

Effect of amendments. — D.C. Law 16-81 substituted “drug or prostitution-related” for “drug-related”.

D.C. Law 18-259 substituted “drug-, firearm-, or prostitution-related” for “drug or prostitution-related”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Legislative history of Law 18-259. — For history of Law 18-259, see notes under § 42-3101.

§ 42-3114. Availability of other remedies.

The provisions of this chapter shall not limit the availability of other remedies under the law or other equitable relief whether or not an adequate remedy exists at law.

(Mar. 26, 1999, D.C. Law 12-194, § 15, 45 DCR 7982.)

Prior Codifications. — 1981 Ed., § 45-3314.

Temporary Addition of Section. — See Historical and Statutory Notes following § 42-3101.

Emergency legislation. — For temporary addition of chapter, see notes to § 42-3101.

Legislative history of Law 12-194. — For legislative history of D.C. Law 12-194, see Historical and Statutory Notes following § 42-3101.

CHAPTER 31A. ABATEMENT OF NUISANCE PROPERTY.

Subchapter I. General

Sec.

- 42-3131.01. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition.
- 42-3131.02. Inspection of buildings for violative conditions; interference with inspection.
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Subchapter II. Registration of Vacant Buildings

- 42-3131.05. Definitions.
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Sec.

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Subchapter I. General.

§ 42-3131.01. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition.

(a)(1) Except as provided in paragraph (2) of this subsection, whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner provided in § 42-3131.03, to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the Mayor of said District, why he should not be required to correct such condition, then, and in that instance, the Mayor of the District of Columbia is authorized to: Cause such condition to be corrected; assess the fair market value of the correction of the condition or the actual cost of the correction, whichever is higher, and all expenses incident thereto (including the cost of publication, if any, herein provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of the District, and collect such tax in the same manner as general taxes in said District are collected; provided, that the correction of any condition aforesaid by the Mayor of said District under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same.

(1A) The Mayor may request the Office of Administrative Hearings to issue, and the Office of Administrative Hearings may issue, a final order

converting a special assessment lien to an administrative judgment. The Mayor may then cause the final order to be entered as a judgment against the owner in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(2) Whenever the owner of any vacant building, as defined in § 42-3131.05(5), shall fail to enclose the doors, windows, areaways, or other openings of the property, the Mayor may immediately enclose the property to meet the standard described in § 42-3131.12. Subsequent to the enclosure, the Mayor shall give the owner notice as prescribed in § 42-3131.03.

(b)(1)(A) There is established in the District of Columbia, and accounted for within the General Fund, a separate revenue source allocable to provide authorization for the purpose of paying the costs of correction of any condition, and all expenses incident thereto, that the Mayor may order or cause pursuant to subsection (a) of this section and for the purposes of demolishing or enclosing a structure under subchapter II of Chapter 31C of this title. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Mayor.

(B) There is established within the fund established by subparagraph (A) of this paragraph an account in which fees and penalties collected under § 6-916(b), shall be deposited, to be expended for the purposes set forth in § 6-916(b).

(2) There shall be deposited to the credit of the fund such amounts as may be appropriated for the fund or for the purposes of the fund; grants, donations, or restitution from any source to the fund or to the District of Columbia for the purposes of the fund; interest earned from the deposit or investment of monies of the fund; if an accounting is made in accordance with, and subject to, § 47-1340(f), amounts assessed and collected as a tax against real property under subsection (a) of this section including any interest and any penalties thereon, or otherwise received to recoup any amounts, incidental expenses or costs incurred, obligated or expended for the purposes of the fund and funds collected pursuant to subchapter II of Chapter 31C of this title; all fees and penalties collected under § 6-916(b) (to be deposited in the account established under paragraph (1)(B) of this subsection) recoveries from enforcement action brought by the Office of the Attorney General on behalf of the District of Columbia or District of Columbia agencies for the abatement of violations of Chapters 1 through 16 of Title 14 of the District of Columbia Code of Municipal Regulations, excluding funds obtained through administrative proceedings; and all other receipts of whatever nature derived from the operation of the fund.

(3) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year, and there are authorized to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be necessary for the capitalization of the fund.

(4) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Council a report of the financial condition of the fund, and

any other special purpose revenue funds or capital project funds used for nuisance abatement activities, and the results of the operations and collections for the fiscal year. The report shall include an itemized accounting of all unrecovered taxes and penalties, the names of delinquent property owners, the nature of corrected building violations, and a detailed accounting of each expenditure. All funding sources shall be separately listed.

(c)(1) The Mayor may cause the summary correction of housing regulation violations or violations of the construction codes where a life-or-health threatening condition exists, as determined by the Mayor. A life-or-health threatening condition means a condition that imminently endangers the health or safety of the tenant or occupant of the premises in a housing unit or housing accommodation, or that imminently endangers the health, safety, or welfare of the surrounding community. The condition may include, but is not limited to, a vacant building, as defined in § 42-3131.05(5), or the interruption of electrical, heat, gas, water, or other essential services, when the interruption results from other than natural causes. The condition may also include the presence of graffiti. Except in the case of a vacant building, the Mayor shall notify promptly the owner or authorized agent that the correction is ordered within a specified time period. If at the time of this notice the owner is engaged in a good faith effort to make the necessary correction, the Mayor shall not commence corrective action unless and until the owner interrupts or ceases the effort. A good faith effort shall be one which is likely to cause the correction of the condition at least as soon as it could otherwise be corrected by the Mayor. The Mayor shall provide an opportunity for review of the summary corrective action without prejudice to the Mayor's authority to take and complete that action. The owner or authorized agent shall be notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner or address is unknown, or cannot be located, notice shall be provided by conspicuous posting on the property. The Mayor may assess all reasonable costs of correcting the condition and all expenses incident thereto as a tax against the property, to carry this tax on the regular tax rolls, and to collect the tax in the same manner as real estate taxes are collected. Monies in the revolving fund established by subsection (b)(1) of this section shall be available to cover the costs of the summary correction authorized by this subsection.

(1A) The Mayor may request the Office of Administrative Hearings to issue, and the Office of Administrative Hearings may issue, a final order converting a special assessment lien to an administrative judgment. The Mayor may then cause the final order to be entered as a judgment against the owner in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(2) For the purposes of this subsection, the presence of graffiti shall be deemed to be a housing regulation violation.

(3) In the case of graffiti which does not constitute a life-or-health threatening condition, but which constitutes a nuisance, the Mayor may order the removal of the graffiti within a specified time period and, subject to 7 days'

notice to the owner or an authorized agent in the manner provided under paragraph (1) of this subsection and an opportunity for review of the order, the Mayor may remove the graffiti if the owner does not comply.

(d) The Mayor may charge any property owner whose property is the subject of corrective action, as provided in subsection (c) of this section, or any property owner who receives a notice to correct wrongful conditions pursuant to § 6-804(c) a fee to cover the administrative costs incurred by the District of Columbia in its efforts to provide that the violation be corrected. The Mayor may assess this fee as a tax against the property, may carry this tax on the regular tax rolls, and may collect this tax in the same manner as real estate taxes are collected.

(e) The Mayor may defer or forgive, in whole or in part, any cost or fee assessed pursuant to §§ 42-3131.01 to 42-3131.03 with respect to any qualified real property approved pursuant to § 6-1503.

(Apr. 14, 1906, 34 Stat. 114, ch. 1626, § 1; Jan. 5, 1980, D.C. Law 3-45, § 2, 26 DCR 2305; June 14, 1980, D.C. Law 3-70, § 7(m), 27 DCR 1776; Mar. 10, 1983, D.C. Law 4-205, § 2, 30 DCR 188; Oct. 20, 1988, D.C. Law 7-177, § 8, 35 DCR 6158; Feb. 27, 1998, D.C. Law 12-52, § 2, 44 DCR 6226; Mar. 26, 1999, D.C. Law 12-201, § 2, 45 DCR 8410; June 9, 2001, D.C. Law 13-305, § 508(b), 48 DCR 334; Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 11, 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 42, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 2073, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-209, § 2, 53 DCR 9080; Mar. 8, 2007, D.C. Law 16-241, § 2, 54 DCR 599; Aug. 16, 2008, D.C. Law 17-219, § 2020, 55 DCR 7598; Mar. 21, 2009, D.C. Law 17-319, § 2(a), 56 DCR 214; Mar. 25, 2009, D.C. Law 17-353, §§ 155, 244(b), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 2141, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2062, 57 DCR 6242.)

Cross references. — Ownership by nonresidents, vacant property, maintenance by resident agent, see § 42-903.

Special assessments, removal of nuisances and payment, see § 47-1205.

Prior Codifications. — 2001 Ed., § 6-711.01.

1981 Ed., § 5-513.

1973 Ed., § 5-313.

Effect of amendments. — D.C. Law 13-305, in subsec. (b)(2), substituted “if an accounting is made in accordance with, and subject to § 47-1340(f), amounts assessed and collected as a tax against real property under subsection (a) of this section” for “amounts assessed and collected as a tax against real property pursuant to subsection (a) of this section”.

D.C. Law 14-114, in subsec. (b)(1), substituted “subsection (a) of this section and for the purposes of demolishing or enclosing a structure under subchapter II of Chapter 31C of this title” for “subsection (a) of this section”; and, in subsec. (b)(2), substituted “expended for the purposes of the fund and funds collected pursu-

ant to subchapter II of Chapter 31C of this title” for “expended for the purposes of the fund”.

D.C. Law 14-213, in subssecs. (b)(1) and (b)(2), validated a previously made technical correction.

D.C. Law 15-105, in subsec. (b)(2), validated a previously made technical correction.

D.C. Law 15-205, in par. (1) of subsec. (b), designated the existing text as subparagraph (A), and added subpar. (B); and, in par. (2) of subsec. (b), substituted “; all fees and penalties collected under § 6-916(b) (to be deposited in the account established under paragraph (1)(B) of this subsection); and all other receipts” for “; and all other receipts”.

D.C. Law 16-209, in subsec. (c), designated existing text as par. (1); in newly designated par. (1), inserted “The condition may also include the presence of graffiti.”; and added pars. (2) and (3).

D.C. Law 16-241 designated the existing text of subsec. (a) as subsec. (a)(1); in subsec. (a)(1), inserted “Except as provided in paragraph (2) of this subsection, whenever”; added subsec. (a)(2); and, in subsec. (c)(1), inserted “a vacant

building, as defined in § 42-3131.05(5), or” and “Except in the case of a vacant building.”

D.C. Law 17-219 rewrote subsec. (b)(4), which had read as follows: “(4) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Council of the District of Columbia a report of the financial condition of the fund and the results of the operations and collections for such fiscal year. Said report should include, but not be limited to, the itemized amounts of unrecovered taxes and penalties, the names of delinquent property owners, and the nature of corrected building violations.”

D.C. Law 17-319, in subsec. (c)(1), substituted “housing regulation violations or violations of the construction codes” for “housing regulation violations”.

D.C. Law 17-353 validated previously made technical corrections in subsecs. (b)(4) and (c).

D.C. Law 18-111, in subsec. (b)(2), substituted “grants, donations, or restitution from any source” for “grants from any source” and substituted “recoveries from enforcement action brought by the Office of the Attorney General on behalf of the District of Columbia or District of Columbia agencies for the abatement of violations of Chapters 1 through 16 of Title 14 of the District of Columbia Code of Municipal Regulations, excluding funds obtained through administrative proceedings; and all other receipts” for “; and all other receipts”.

D.C. Law 18-223 added subsecs. (a)(1A) and (c)(1A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(b) of the Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

For temporary (225 day) amendment of section, see § 2(a) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Nuisance Repairs Emergency Amendment Act of 1997 (D.C. Act 12-101, July 2, 1997, 44 DCR 4195), § 2 of the Nuisance Repairs Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-159, October 16, 1997, 44 DCR 6053), and § 2 of the Nuisance Repairs Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-241, January 13, 1998, 45 DCR 636).

For temporary (90 day) amendment of section, see § 8(b) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

For temporary (90 day) amendment of section, see § 2073 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2073 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment, see § 2(a) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 2(a) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

For temporary (90 day) amendment of section, see § 2141 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2141 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2062 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 3-45. — Law 3-45, the “Realty Violations Correction Fund Act of 1979,” was introduced in Council and assigned Bill No. 3-136, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1979, and October 23, 1979, respectively. Signed by the Mayor on November 9, 1979, it was assigned Act No. 3-123 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70, the “District of Columbia Fund Accounting Act of 1980,” was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980, and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-205. — Law 4-205, the “Summary Abatement of Life-or-Health Threatening Conditions Act of 1982,” was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December

28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-177. — Law 7-177, the “Economic Development Zone Incentives Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988, and July 12, 1988, respectively. Signed by the Mayor on August 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-52. — Law 12-52, the “Nuisance Repairs Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-174, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-169 and transmitted to both Houses of Congress for its review. D.C. Law 12-52 became effective on February 27, 1998.

Legislative history of Law 12-201. — Law 12-201, the “Summary Abatement of Life-or-

Health Threatening Conditions Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-175, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 13, 1998, it was assigned Act No. 12-487 and transmitted to both Houses of Congress for its review. D.C. Law 12-201 became effective on March

Short title. — Short title: Section 2019 of D.C. Law 17-219 provided that subtitle H of title II of the act may be cited as the “Nuisance Properties Abatement Implementation Amendment Act of 2008”.

Short title: Section 2140 of D.C. Law 18-111 provided that subtitle O of title II of the act may be cited as the “Abatement Property Nuisance Fund Amendment Act of 2009”.

Short title: Section 2061 of D.C. Law 18-223 provided that subtitle F of title II of the act may be cited as the “Administrative Judgments of Nuisance Property Amendment Act of 2010”.

Editor’s notes. — Mayor authorized to issue rules: Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

CASE NOTES

In general.

Superior Court correctly decided that it would not exercise jurisdiction over taxpayer’s suit as a tax appeal in suit to enjoin removal of property tax lien, where tax was not paid and more than six months elapsed from date of assessment until filing of suit. *Agbaraji v.*

Aldridge, 836 A.2d 567, 2003 D.C. App. LEXIS 688 (2003).

The District of Columbia can collect tax assessed to correct deficiencies on a property in the same manner as general taxes in the District are collected. *Agbaraji v. Aldridge*, 836 A.2d 567, 2003 D.C. App. LEXIS 688 (2003).

§ 42-3131.02. Inspection of buildings for violative conditions; interference with inspection.

(a) For the purpose of carrying into effect § 42-3131.01, the Mayor of the District of Columbia and all other persons, including contractors and employees of contractors acting under his authority or by his direction, are authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by this subchapter shall, upon conviction thereof, be punished by a fine not exceeding \$100 or by imprisonment for a period not exceeding 3 months, or by both such fine and imprisonment, in the discretion of the court.

(b)(1) The Mayor may apply to a judge of the District of Columbia for an administrative search warrant to enter any premises to conduct any inspection

required or authorized by law to determine compliance with the provisions of this chapter.

(2) The application for an administrative search warrant shall be in writing and sworn to by the applicant and shall particularly describe the place, structure, or premises to be inspected and the nature, scope, and purpose of the inspection to be performed by the applicant.

(3) Before filing an application for an administrative search warrant with a court, the Mayor shall obtain approval by the Office of the Attorney General as to its legality in both form and substance under the standards and criteria of this section and a statement to this effect shall be included as part of the application.

(4) A judge of a court referred to in this section may issue the warrant on finding that:

(A)(i) The applicant has sought access to the property for the purpose of making an inspection; and

(ii)(I) After requesting, at a reasonable time, the owner, tenant, or other individual in charge of the property to allow access, has been denied access to the property; or

(II) After making a reasonable effort, the applicant has been unable to locate any of these individuals;

(B) The requirements of paragraphs (2) and (3) of this subsection are satisfied;

(C) The Mayor is authorized by law to make an inspection of the property for which the warrant is sought; and

(D) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this chapter or any rule or regulation adopted under this chapter or by showing that:

(i) A reasonable administrative inspection program exists regarding the condition of the property; and

(ii) The proposed inspection comes within the program.

(5) An administrative search warrant issued under this section shall specify the place, structure, premise, vehicle, or records to be inspected. The inspection conducted shall not exceed the limits specified in the warrant.

(6) An administrative search warrant issued under this section authorizes the applicant and other officials or employees of the District to enter specified property to perform the inspection, sampling, and other functions authorized by law to determine compliance with the provisions of this chapter.

(7) An administrative search warrant issued under this section shall be executed and returned to the judge by whom it was issued within:

(A) The time specified in the warrant, not to exceed 30 days; or

(B) If no time period is specified in the warrant, 15 days from the date of its issuance.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 2; Apr. 4, 2006, D.C. Law 16-81, § 4, 53 DCR 1050.)

Prior Codifications. — 2001 Ed., § 6-711.02.

1981 Ed., § 5-514.

1973 Ed., § 5-314.

Effect of amendments. — D.C. Law 16-81 designated the existing text of the section as subsec. (a); and added subsec. (b).

Legislative history of Law 16-81. — For Law 16-81, see notes following § 42-3101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 42-3131.03. Notice requiring correction of unlawful conditions; service.

For the purposes of this subchapter, any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served:

(1) If delivered to the person to be notified, if sent by electronic mail to the last-known electronic mail address of the person to be notified, or if left, at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein;

(2) If no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates;

(3) If no such office can be found in the District by reasonable search, if forwarded by first-class mail to the last-known address of the person to be notified, or the person's agent, as determined by the tax records, business license records, or business entity registration records, and not returned by the post office authorities;

(4) If no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by paragraph (3) of this section shall be returned by the post office authorities, if posted in a conspicuous place in or about the property affected by the notice; or

(5) If by reason of an outstanding, unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of this subchapter be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or

employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the unlawful condition to be corrected; and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 3; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(43); Mar. 21, 2009, D.C. Law 17-319, § 2(b), 56 DCR 214; Sept. 24, 2010, D.C. Law 18-223, § 2053, 57 DCR 6242.)

Cross references. — Documentary evidence, prima facie evidence of delivery, certified mail return receipts, see § 14-506.

Prior Codifications. — 2001 Ed., § 6-711.03.

1981 Ed., § 5-515.

1973 Ed., § 5-315.

Effect of amendments. — D.C. Law 17-319 rewrote pars. (3) and (4).

D.C. Law 18-223, in par. (1), substituted “if sent by electronic mail to the last-known electronic mail address of the person to be notified, or if left,” for “or if left”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) amendment, see § 2(b) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 2(b) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

For temporary (90 day) amendment of section, see § 2053 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

§ 42-3131.04. [Reserved].

Subchapter II. Registration of Vacant Buildings.

§ 42-3131.05. Definitions.

For the purposes of this subchapter, the term:

(1)(A) “Blighted vacant building” means a vacant building that is determined by the Mayor to be unsafe, insanitary, or which is otherwise determined to threaten the health, safety, or general welfare of the community.

(B) In making a determination that a vacant building is a blighted vacant building, the Mayor shall consider the following:

(i) Whether the vacant building is the subject of a condemnation proceeding before the Board of Condemnation and Insanitary Buildings;

(ii) Whether the vacant building is boarded up; and

(iii) Failure to comply with the following vacant building maintenance standards:

(I) Doors, windows, areaways, and other openings are weather-tight and secured against entry by birds, vermin, and trespassers, and missing or broken doors, windows, and other openings are covered;

(II) The exterior walls are free of holes, breaks, graffiti, and loose or

rotting materials, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint; or

(III) All balconies, porches, canopies, marquees, signs, metal awnings, stairways, accessory and appurtenant structures, and similar features are safe and sound, and exposed metal and wood surfaces are protected from the elements by application of weather-coating materials, such as paint.

(1A) "Commercial unit" means a building, or part of a building, zoned for commercial purposes under the zoning regulations of the District of Columbia.

(2) "Dwelling unit" means a room, or group of rooms forming a single unit, designed, or intended to be used, for living and sleeping, whether or not designed or intended for the preparation and eating of meals or to be under the exclusive control of the occupant. The term "dwelling unit" shall not include a room, or group of rooms forming a single unit, in a hotel or motel licensed in the District of Columbia, actively operating as a hotel or motel.

(2A) "Fit for occupancy" means ready for immediate occupancy by a tenant without more than minor cosmetic changes.

(3) "Occupied" means:

(A) For purposes of a dwelling unit, the use of one's residence in improved real property on a regular basis; and

(B) For purposes of a commercial unit, use consistent with zoning regulations, for which there is a current valid certificate of occupancy, and (i) paid utility receipts for the specified period, executed lease agreements, or sales tax return, or (ii) other evidence of use of the building that the Mayor may require by rule.

(4) "Owner" means one or more persons or entities with an interest in real property in the District of Columbia that appears in the real property tax records of the Office of Tax and Revenue.

(4A) "Real property" means real property as defined under § 47-802(1).

(4B) "Related owners" or "related ownership" exists when a deduction for a loss from the sale or exchange of properties between taxpayers would be disallowed under section 267 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 78; 26 U.S.C. § 267); provided, that the exclusion under section 267(a)(1) for a loss in a distribution in a complete liquidation shall not apply.

(5) "Vacant building" means real property improved by a building which, on or after April 27, 2001, has not been occupied continuously; provided, that in the case of residential buildings, a building shall only be a vacant building if the Mayor determines that there is no resident for which an intent to return and occupy the building can be shown. When determining whether there is a resident, the Mayor shall consider the following:

(A) Electrical, gas, or water meter either not running or showing low usage;

(B) Accumulated mail;

(C) Neighbor complaint;

(D) No window covering;

(E) No furniture observable;

- (F) Open accessibility;
- (G) Deferred maintenance, including loose or falling gutters, severe paint chipping, or overgrown grass; and
- (H) The dwelling is boarded up.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 5, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Aug. 15, 2008, D.C. Law 17-216, § 3(a), 55 DCR 7500; Sept. 24, 2010, D.C. Law 18-223, § 2042(a), 57 DCR 6242.)

Effect of amendments. — D.C. Law 17-216, in the lead-in text, made a technical correction that resulted in no change in the text; in par. (2), substituted “District of Columbia, actively operating as a hotel or motel” for “District of Columbia”; added pars. (2A), (4A), and (4B); and rewrote pars. (4) and (5).

D.C. Law 18-223 redesignated former par. (1) as par. (1A); added par. (1); and rewrote par. (5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) amendment of section, see § 3(a) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

For temporary (225 day) amendment of section, see § 2(a) of Real Property Tax Reform Temporary Amendment Act of 2010 (D.C. Law 18-153, May 22, 2010, law notification 57 DCR 5381).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(a) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(a) of Nuisance Properties Abatement Reform and Real Property Classification

Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2(a), of Real Property Tax Reform Emergency Amendment Act of 2009 (D.C. Act 18-313, February 22, 2010, 57 DCR 1645).

For temporary (90 day) amendment of section, see § 2042(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — Law 13-281, the “Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-646, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-578 and transmitted to both Houses of Congress for its review. D.C. Law 13-281 became effective on April 27, 2001.

Legislative history of Law 17-216. — Law 17-216, the “Nuisance Properties Abatement Reform and Real Property Classification Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-86 which was referred to Finance and Revenue and Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 4, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 24, 2008, it was assigned Act No. 17-416 and transmitted to both Houses of Congress for its review. D.C. Law 17-216 became effective on August 15, 2008.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

Short title. — Short title: Section 2021 of D.C. Law 18-223 provided that subtitle D of title II of the act may be cited as the “Vacant Property Disincentivization Amendment Act of 2010”.

Editor’s notes. — Section 601 of D.C. Law 13-281 provided: “The Mayor may issue rules to implement the Abatement and Condemnation

of Nuisance Properties Omnibus Amendment Act of 2000 in accordance with the District of Columbia Administrative Procedure Act.”

§ 42-3131.05a. Notice by mail.

Notice shall be deemed to be served properly on the date when mailed by first class mail to the owner of record of the vacant building at the owner’s mailing address as updated in the real property tax records of the Office of Tax and Revenue. Notice shall also be posted on the vacant building.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 5a, as added Aug. 15, 2008, D.C. Law 17-216, § 3(b), 55 DCR 7500.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

Emergency legislation. — For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) addition, see § 3(b) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Editor’s notes. — Section 5(a) of D.C. Law 17-216 provided that sections 2, 3, and 4(b) and (c) shall apply to real property tax years beginning after September 30, 2006.

§ 42-3131.06. Registration of vacant buildings.

(a) Except as provided in subsections (b) and (c) of this section, the owner of a vacant building shall maintain the building in compliance with the requirements of § 42-3131.12 and, within 30 days after it becomes a vacant building, register the building with the Mayor, and pay the registration fee. The Mayor, in his sole discretion, may extend the time for good cause.

(b) A vacant building shall not be included on the list compiled pursuant to § 42-3131.16 or subject to the registration fee pursuant to § 42-3131.09 if it is:

(1) Owned by the government of the United States or its instrumentalities;

(2) Owned by a foreign government or its instrumentalities;

(3) Under active construction or undergoing active rehabilitation, renovation, or repair, and there is a building permit to make the building fit for occupancy that was issued, renewed, or extended within 12 months of the required registration date;

(3A) Repealed.

(4) In compliance with the requirements of § 42-3131.12 and the housing regulations of the District of Columbia and the owner or his agent has been actively seeking in good faith to rent or sell it; provided, that:

(A) The time period for sale or rent shall not exceed:

(i) One year from the initial listing, offer, or advertisement of sale in the case of residential buildings;

(ii) Two years from the initial listing, offer, or advertisement of sale in the case of commercial buildings; or

(iii) One year from the initial listing, offer, or advertisement to rent; and;

(B) Any leased property exempt under this paragraph shall have a valid certificate of occupancy;

(5)(A) Exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.

(B) The exemption may be granted for a period not to exceed 12 months from the required registration date, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship. The Mayor may withdraw the exemption at any time. Any exemption shall be published in the District of Columbia Register.

(6) Repealed.

(7) For a period not to exceed 24 months, the subject of a probate proceeding or the title is the subject of litigation (not including a foreclosure of the right of redemption action brought under Chapter 13A of Title 47 [§ 47-1330 et seq.]); or

(8) For a period not to exceed 12 months, the subject of a pending application for a necessary approval for development before the Board of Zoning Adjustment, the Zoning Commission for the District of Columbia, the Commission on Fine Arts, the Historic Preservation Review Board, the Mayor's Agent for Historic Preservation, the Department of Public Works, or the National Capital Planning Commission.

(c) If a vacant building is owned by the District of Columbia or its instrumentalities, it shall be subject to the registration requirements in subsection (a) of this section and the maintenance requirements in § 42-3131.12, but shall not be subject to the fee requirements under subsection (a) of this section or the fines and penalties collected under § 42-3131.10.

(d) If a present interest in a vacant building registered under this chapter is transferred or otherwise conveyed, a deed shall not be recorded by the Recorder of Deeds until a new registration is filed with the Mayor and the applicable fees are paid.

(e) If the name or address of an owner of a vacant building changes for any reason other than by transfer or conveyance, the change shall be reported to the Mayor in writing within 30 days in the manner provided in § 42-405(b-1).

(f)(1) The cumulative time period for exemption from registration and fee requirements for a vacant building under the same, substantially similar, or related ownership shall not exceed 3 real property tax years.

(2) Notwithstanding paragraph (1) of this subsection, any exemption shall be terminated at the end of the 2007 real property tax year if the building under the same, substantially similar, or related ownership benefited from an exemption under this section or under § 47-813(c-6) during 3 or more real property tax years.

(3) The limitations set forth in paragraphs (1) and (2) of this subsection

shall not apply to vacant buildings that benefit from the exemption under subsection (b)(1) or (b)(2) of this section.

(4) A vacant building benefiting from an exemption under this section or § 47-813(c-6)(2)(C) or (c-6)(3)(C), on December 27, 2006, shall continue to benefit from the exemption and shall not be required to register or pay fees for the duration permitted under those provisions; provided, that the exemption shall not be valid after September 30, 2007; provided further, that the vacant building may qualify for an exemption in effect after December 28, 2006 and subject to the time restriction and exclusion set forth in paragraphs (2) and (3) of this subsection.

(g) The total cumulative time for any exemption granted to any property shall not exceed 5 years in any 12-year period, excluding exemptions granted under subsections (b)(1) and (b)(2) of this section.

(h) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter. The rules may include a schedule of fines for violations of this chapter.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 6, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Oct. 18, 2005, D.C. Law 16-23, § 2(a), 52 DCR 8078; Aug. 15, 2008, D.C. Law 17-216, § 3(c), 55 DCR 7500; Sept. 24, 2010, D.C. Law 18-223, § 2042(b), 57 DCR)

Effect of amendments. — D.C. Law 16-23, in subsec. (b)(3), substituted “and if there is a valid building permit that was issued within 60 days of the required registration date;” for “and if there is a valid building permit that was issued within 60 days of the required registration date; provided, that the scope of the permit is not limited to electrical or plumbing work; provided further, that this exemption shall not exceed one year from the date of issuance of the first building permit for rehabilitation, renovation or repair;”; and, in subsec. (b)(4), substituted “the owner or his agent has been actively seeking to rent or sell it;” for “the owner or his agent has been actively seeking to rent or sell it; provided, that the time period for sale or rent shall not exceed one year from the initial listing, offer, or advertisement of sale, or 90 days from the initial listing, offer, or advertisement to rent;”.

D.C. Law 17-216 rewrote the section.

D.C. Law 18-223 rewrote subsecs. (b) and (h).

Temporary Amendment of Section. — Section 3(c) of D.C. Law 16-259, in subsec. (b), in par. (4), substituted “8 months” for “one year from the initial listing, offer, or advertisement of sale, or 90 days from the initial listing, offer, or advertisement to rent”; and amended pars. (3) and (5), and added pars. (6), (7), (8), and (9) to read as follows:

“(3) Under active construction or undergoing active rehabilitation, renovation, or repair, and there is a valid building permit to make the building fit for occupancy that was issued,

renewed, or extended within 12 months of the required registration date;”

“(5) Exempted by the Mayor in his or her sole discretion; provided, that the exemption may be withdrawn upon notice in the same manner as if the building were designated as vacant under section 11;

“(6) Occupied at the time of a fire, flood, or other casualty which occurred within the preceding 12 months and which was not intentionally caused by the owner;

“(7) For a period not to exceed 24 months, the subject of a probate proceeding or the title is the subject of litigation (not including a foreclosure of the right of redemption action brought under Chapter 13A of Title 47 of the District of Columbia Official Code);

“(8) For a period not to exceed 12 months, the subject of a pending application for a necessary approval for development before the Board of Zoning Adjustment, the Zoning Commission for the District of Columbia, the Commission on Fine Arts, the Historic Preservation Review Board, the Mayor’s Agent for Historic Preservation, or the National Capital Planning Commission; or

“(9) For a period not to exceed 12 months, owned by a qualifying nonprofit housing organization under D.C. Official Code § 47-3505(a).” In subsec. (e), substituted “30 days in the manner provided in section 499d(b-1) of An Act To establish a code of law for the District of Columbia, effective October 23, 1997 (D.C. Law 14-282; D.C. Official Code § 42-405(b-1)).” for

"30 days"; and added subsecs. (f) and (g) to read as follows:

"(f)(1) The cumulative time period for exemption from registration and fee requirements for a vacant building under the same, substantially similar, or related ownership shall not exceed 3 real property tax years.

"(2) Notwithstanding paragraph (1) of this subsection, any exemption shall be terminated at the end of the 2007 real property tax year if the building under the same, substantially similar, or related ownership benefitted from an exemption under this section or under D.C. Official Code § 47-813(c-6) during 3 or more real property tax years.

"(3) The limitations set forth in paragraphs (1) and (2) of this subsection shall not apply to vacant buildings that benefit from the exemption under subsection (b)(1), (b)(2), or (b)(5) of this section.

"(4) A vacant building benefitting from an exemption under this section or D.C. Official Code § 47-813(c-6)(2)(C) or (c-6)(3)(C), immediately preceding the effective date of the Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-1036), shall continue to benefit from the exemption and shall not be required to register or pay fees for the duration permitted under those provisions; provided, that the exemption shall not be valid after September 30, 2007; provided further, that the vacant building may qualify for an exemption in effect after the effective date of the Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006, passed on 2nd reading on December 19, 2006 (Enrolled version of Bill 16-1036), and subject to the time restriction and exclusion set forth in paragraphs (2) and (3) of this subsection.

"(5) For purposes of this subsection, ownership shall be related if a deduction for a loss from the sale or exchange of properties between taxpayers would be disallowed under section 267 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 78; 26 U.S.C. § 267); provided, that the exclusion under section 267(a)(1) for a loss in a distribution in a complete liquidation shall not apply.

"(g) The Mayor shall issue proposed rules to implement the provisions of this title on or before June 30, 2007. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved."

Section 7(b) of D.C. Law 16-259 provided that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 17-102, in subsec. (b), in par. (4), substituted "8 months" for "one year from the initial listing, offer, or advertisement of sale, or 90 days from the initial listing, offer, or advertisement to rent", and amended pars. (3) and (5) and added pars. (6), (7), (8), and (9) to read as follows:

"(3) Under active construction or undergoing active rehabilitation, renovation, or repair, and there is a valid building permit to make the building fit for occupancy that was issued, renewed, or extended within 12 months of the required registration date;"

"(5) Exempted by the Mayor in his or her sole discretion; provided, that the exemption may be withdrawn upon notice in the same manner as if the building were designated as vacant under section 11;

"(6) Occupied at the time of a fire, flood, or other casualty which occurred within the preceding 12 months and which was not intentionally caused by the owner;

"(7) For a period not to exceed 24 months, the subject of a probate proceeding or the title is the subject of litigation (not including a foreclosure of the right of redemption action brought under Chapter 13A of Title 47 of the District of Columbia Official Code);

"(8) For a period not to exceed 12 months, the subject of a pending application for a necessary approval for development before the Board of Zoning Adjustment, the Zoning Commission for the District of Columbia, the Commission on Fine Arts, the Historic Preservation Review Board, the Mayor's Agent for Historic Preservation, or the National Capital Planning Commission; or

"(9) For a period not to exceed 12 months, owned by a qualifying nonprofit housing organization under D.C. Official Code § 47-3505(a)."; in subsec. (e), substituted "30 days in the manner provided in section 499d(b-1) of An Act To establish a code of law for the District of Columbia, effective October 23, 1997 (D.C. Law 14-282; D.C. Official Code § 42-405(b-1))" for "30 days"; and added subsecs. (f) and (g) to read as follows:

"(f)(1) The cumulative time period for exemption from registration and fee requirements for a vacant building under the same, substantially similar, or related ownership shall not exceed 3 real property tax years.

"(2) Notwithstanding paragraph (1) of this subsection, any exemption shall be terminated at the end of the 2007 real property tax year if the building under the same, substantially similar, or related ownership benefitted from an exemption under this section or under D.C. Official Code § 47-813(c-6) during 3 or more real property tax years.

"(3) The limitations set forth in paragraphs (1) and (2) of this subsection shall not apply to vacant buildings that benefit from the exemp-

tion under subsection (b)(1), (b)(2), or (b)(5) of this section.

“(4) A vacant building benefitting from an exemption under this section or D.C. Official Code § 47-813(c-6)(2)(C) or (c-6)(3)(C), immediately preceding March 8, 2007, shall continue to benefit from the exemption and shall not be required to register or pay fees for the duration permitted under those provisions; provided, that the exemption shall not be valid after September 30, 2007; provided further, that the vacant building may qualify for an exemption in effect after March 8, 2007, and subject to the time restriction and exclusion set forth in paragraphs (2) and (3) of this subsection.

“(5) For the purposes of this subsection, ownership shall be related if a deduction for a loss from the sale or exchange of properties between taxpayers would be disallowed under section 267 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 78; 26 U.S.C. § 267); provided, that the exclusion under section 267(a)(1) for a loss in a distribution in a complete liquidation shall not apply.

“(g) The Mayor shall issue proposed rules to implement the provisions of this act on or before June 30, 2007. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved.”

Section 7(b) of D.C. Law 17-102 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(c) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(c) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(c) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2042(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 16-23. — Law 16-23, the “Nuisance Properties Abatement Reform Amendment Act of 2005”, was introduced in Council and assigned Bill No. 16-30 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-132 and transmitted to both Houses of Congress for its review. D.C. Law 16-23 became effective on October 18, 2005.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

§ 42-3131.07. Registration and renewal procedure.

(a) At the time of application for the initial registration or renewal of registration of a vacant building, the owner shall arrange with the Mayor for the inspection of the building. On receiving an application for the initial registration or renewal of registration of a vacant building, the Mayor shall thereafter inspect the building. The Mayor shall approve the initial registration or the renewal registration for one year if:

(1) The building has been maintained in accordance with the requirements of § 42-3131.12; and

(2) The vacancy of the building will not:

(A) Be detrimental to the public health, safety, and welfare;

(B) Unreasonably interfere with the reasonable and lawful use and enjoyment of the other premises within the neighborhood; and

(C) Pose a hazard to police officers or firefighters entering the building in an emergency;

(3) The building complies with the fire, building, and housing codes of the District of Columbia;

(4) The continuance of any maintenance work or condition of occupancy is not dangerous to life or property;

(5) No false statements or misrepresentations have been made upon the registration application;

(6) Orders on a building have been complied with and the building complies with any applicable occupancy requirements;

(7) An adequate water supply or facilities for fire fighting purposes is furnished as required in the fire code; and

(8) The Mayor is permitted to inspect the building before initial registration, during the registration period, and before a renewal of registration.

(b) If the owner of a vacant building fails to comply with the provisions of subsection (a) of this section, both initially and throughout the registration period, the Mayor may deny or revoke the owner's registration and may subject the owner to the penalties provided in § 42-3131.10.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 7, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3131.08. Notice of denial or revocation of registration.

The owner shall be notified in writing of the denial or revocation of registration of a vacant building and the right to appeal. Upon notice of the denial or revocation, the owner shall not proceed with any operation to which the registration related. If the registration is denied or revoked, no registration fees or parts thereof shall be returned.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 8, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Aug. 15, 2008, D.C. Law 17-216, § 3(d), 55 DCR 7500.)

Effect of amendments. — D.C. Law 17-216 rewrote the section which had read as follows: "A notice of denial or revocation of registration shall be in writing and shall be served upon the owner, or his or her agent. A notice of denial or revocation of registration shall also be posted on the vacant building. Upon receipt or posting of the notice of denial or revocation of registration, a person shall not proceed with any operation to which such registration related. If an initial or renewal registration is denied, or if a registration is revoked during the registration period, no registration fees, or parts thereof, shall be returned to the owner."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(d) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-

259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) amendment of section, see § 3(d) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(d) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(d) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(d) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

§ 42-3131.09. Fees.

(a) As provided in § 42-3131.06(a), the owner of a building shall register the building and pay the registration fee within 30 days after it becomes a vacant building, except if the vacant building is owned by the government of the United States or its instrumentalities or by a foreign government or its instrumentalities. The Mayor, in his or her sole discretion, may extend the time for payment for good cause.

(b) Registrations shall be renewed annually from date of initial issuance unless there is a change in ownership.

(c) The initial registration fee shall be \$250.

(d) The renewal registration fee shall be \$250.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 9, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Aug. 15, 2008, D.C. Law 17-216, § 3(e), 55 DCR 7500; Sept. 24, 2010, D.C. Law 18-223, § 2042(c), 57 DCR 6242.)

Effect of amendments. — D.C. Law 17-216, in subsec. (d), substituted “§ 42-3131.08” for “§ 42-3131.11”.

D.C. Law 18-223 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(e) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) amendment of section, see § 3(e) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(e) of Nuisance Properties Abatement Reform and Real Property Classification Emergency

Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(e) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(e) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2042(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

§ 42-3131.10. Penalties for noncompliance.

(a) The failure of the owner of a vacant building to register and pay all required fees under § 42-3131.06(a) or § 42-3131.09 after notice of the designation of the owner's building as vacant, the determination of delinquency of registration or fee payment, the denial or revocation of registration, the filing by an owner of any false or misleading registration-related information, or the refusal of the owner of a vacant building to permit the Mayor to inspect the building shall, upon conviction thereof, be punished by a fine not to exceed \$1,000. The Director of the Department of Consumer and Regulatory

Affairs shall provide the Office of the Attorney General with a list of all owners who fail to register and pay the required fee after notice.

(b) If the owner of a vacant building fails to maintain the building in compliance with the requirements of § 42-3131.12 or, having obtained a vacant property registration, subsequently fails to comply with the other registration requirements under § 42-3131.07, the Mayor may:

(1) Charge the owner with failure to comply and enforce all applicable penalties under this chapter, and

(2) Take other action as required by the fire, building, and housing codes of the District of Columbia to bring the building into compliance with those codes.

(c) Civil fines, penalties, and fees may be imposed as additional sanctions for any infraction of the provision of § 42-3131.06, § 42-3131.07, § 42-3131.08, § 42-3131.09, or § 42-3131.12, pursuant to Chapter 18 of Title 2.

(d) Criminal prosecutions under § 42-3131.05 through § 42-3131.15 shall be brought in the name of the District of Columbia by the Attorney General for the District of Columbia.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 10, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Oct. 18, 2005, D.C. Law 16-23, § 2(b), 52 DCR 8078; Oct. 18, 2005, D.C. Law 16-24, § 4(a), 52 DCR 8080; Mar. 8, 2007, D.C. Law 16-236, § 2, 54 DCR 391; Aug. 15, 2008, D.C. Law 17-216, § 3(f), 55 DCR 7500; Sept. 24, 2010, D.C. Law 18-223, § 2042(d), 57 DCR 6242.)

Effect of amendments. — D.C. Law 16-23, in subsec. (a), added the second sentence; and added subsec. (c).

D.C. Law 16-24 added subsec. (d).

D.C. Law 16-236 rewrote subsec. (c) which had read as follows: “(c) In addition to the penalties provided in subsection (a) of this section, and other available remedies, the failure of the owner of a vacant building to register and pay all the required fees under § 42-3131.06(a) or § 42-3131.09 within 10 days after receipt of the mailing of a delinquency and determination notice under § 42-3131.11 shall be punishable by a civil fine not to exceed \$1,000 for each instance of inclusion of each property in the semiannual list under § 42-3131.11. The Mayor shall provide for such fines in accordance with Chapter 18 of Title 2.”

D.C. Law 17-216, in subsec. (a), substituted “notice of the designation of the owner’s building as vacant, the determination of delinquency of registration or fee payment, the denial or revocation of registration, the filing by an owner of any false or misleading registration-related information, or” for “receipt of a mailing of a delinquency and determination notice under § 42-3131.11 or”.

D.C. Law 18-223 deleted “, imprisonment for not more than 90 days, or both” following “\$1,000”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 4(a) of Abatement of Nuisance Construction Projects Temporary Amendment Act of 2005 (D.C. Law 16-4, May 14, 2005, law notification 52 DCR 5427).

For temporary (225 day) amendment of section, see § 2 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Temporary Amendment Act of 2006 (D.C. Law 16-183, November 16, 2006, law notification 53 DCR

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(a) of Abatement of Nuisance Construction Projects Emergency Amendment Act of 2005 (D.C. Act 16-42, February 17, 2005, 52 DCR 3045).

For temporary (90 day) amendment of section, see § 2 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Emergency Amendment Act of 2006 (D.C. Act 16-408, June 26, 2006, 53 DCR 5428).

For temporary (90 day) amendment of section, see § 2 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-479, September 22, 2006, 53 DCR 7938).

For temporary (90 day) amendment of section, see § 3(f) of Nuisance Properties Abatement Reform and Real Property Classification

Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(f) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(f) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2042(d) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 16-23. — For Law 16-23, see notes following § 42-3131.06.

Legislative history of Law 16-24. — Law 16-24, the “Abatement of Nuisance Construction Projects Amendment Act of 2005”, was introduced in Council and assigned Bill No. 16-30 which was referred to the Committee on

Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-133 and transmitted to both Houses of Congress for its review. D.C. Law 16-24 became effective on October 18, 2005.

Legislative history of Law 16-236. — Law 16-236, the “Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-786, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was assigned Act No. 16-592 and transmitted to both Houses of Congress for its review. D.C. Law 16-236 became effective on March 8, 2007.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

§ 42-3131.11. Notice of vacancy designation and right to appeal.

The Mayor shall identify nonregistered vacant buildings in the District, excluding vacant buildings identified in § 42-3131.08, and blighted vacant buildings. The owner shall be notified that the owner’s building has been designated as a vacant building or as a blighted vacant building and of the owner’s right to appeal.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 11, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; June 5, 2003, D.C. Law 14-307, § 1302, 49 DCR 11664; Oct. 18, 2005, D.C. Law 16-24, § 4(b), 52 DCR 8080; Aug. 15, 2008, D.C. Law 17-216, § 3(g), 55 DCR 7500; Sept. 24, 2010, D.C. Law 18-223, § 2042(e), 57 DCR 6242.)

Effect of amendments. — D.C. Law 14-307, in subsec. (a)(1), substituted “real properties, as identified on the cadastral maps of the Office of Tax and Revenue according to square, parcel, or reservation, and lot,” for “building addresses”; and added subsec. (a)(3).

D.C. Law 16-24, in subsec. (a)(2), substituted “quarterly” for “semiannual”.

D.C. Law 17-216 rewrote the section.

D.C. Law 18-223 rewrote the section, which had read as follows: “The Mayor shall identify nonregistered vacant buildings in the District, excluding vacant buildings identified in § 42-3131.08. The owner shall be notified that the owner’s building has been designated as vacant and of the owner’s right to appeal.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 4(b) of Abatement of Nuisance Construction Projects Temporary Amendment Act of 2005 (D.C. Law 16-4, May 14, 2005, law notification 52 DCR 5427).

For temporary (225 day) amendment of section, see § 3(g) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) amendment of section, see § 3(g) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

For temporary (225 day) amendment of section, see § 2(b) of Real Property Tax Reform

Temporary Amendment Act of 2010 (D.C. Law 18-153, May 22, 2010, law notification 57 DCR 5381).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 1302 and 1304 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see §§ 1302 and 1304 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see §§ 1302 and 1304 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 4(b) of Abatement of Nuisance Construction Projects Emergency Amendment Act of 2005 (D.C. Act 16-42, February 17, 2005, 52 DCR 3045).

For temporary (90 day) amendment of section, see § 3(g) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(g) of Nuisance Properties Abate-

ment Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(g) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2(b), of Real Property Tax Reform Emergency Amendment Act of 2009 (D.C. Act 18-313, February 22, 2010, 57 DCR 1645).

For temporary (90 day) amendment of section, see § 2042(e) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 42-1103.

Legislative history of Law 16-24. — For Law 16-24, see notes following § 42-3131.10.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

Editor's notes. — Application of Law 14-307: Section 1304 of D.C. Law 14-307 provided: "Sections 1302 and 1303 shall apply as of October 1, 2002."

§ 42-3131.12. Vacant building maintenance standard.

A building shall be adequately maintained if:

(1) Doors, windows, areaways, and other openings are weather-tight and secured against entry by birds, vermin, and trespassers, and missing or broken doors, windows, and other openings are covered with ½ inch CDX plywood that is weather protected, tightly fitted to the opening, and secured by screws or bolts;

(2) The roof and flashing are sound and tight, will not admit moisture, and are drained to prevent dampness or deterioration in the walls or interior;

(3) The building storm drainage system is adequately sized and installed in an approved manner and functional;

(4) The interior and exterior is maintained in good repair, structurally sound, free from debris, rubbish, and garbage, and sanitary so as not to threaten public health or safety;

(5) The structural members are free of deterioration and capable of safely bearing imposed dead and live loads;

(6) The foundation walls are plumb, free from open cracks and breaks, and vermin-proof;

(7) The exterior walls are free of holes, graffiti, breaks, and loose or rotting materials, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint;

(8) The cornices, belt courses, corbels, terra cotta trim, wall facings, and

similar decorative features are safe, anchored, and in good repair, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint;

(9) All balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts, and similar features are in good repair, anchored, safe and sound, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint;

(10) Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe, sound, and in good repair, and exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint;

(11) Openings in sidewalks are safe for pedestrian travel;

(12) Accessory and appurtenant structures such as garages, sheds, and fences are free from safety, health, and fire hazards; and

(13) The property on which a structure is located is clean, safe, and sanitary and does not threaten the public health or safety.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 12, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Mar. 3, 2010, D.C. Law 18-111, § 7101, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111, in par. (7), substituted “holes, graffiti, breaks,” for “holes, breaks.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 7101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7101 of Fiscal Year Budget Support Congressional Review Emergency Amendment

Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Short title. — Short title: Section 7100 of D.C. Law 18-111 provided that subtitle H of title VII of the act may be cited as the “Real Property Tax Reform Classification Amendment Act of 2009”.

§ 42-3131.13. Public identification of owner.

The Mayor may cause to be affixed to the property containing a vacant building required to be registered under this chapter a sign setting forth the name of the owner of each unit and any other pertinent information that the Mayor may require to protect the public health and welfare.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 13, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3131.14. Collection.

(a)(1) Any fees required under § 42-3131.06(a) or § 42-3131.09 that remain unpaid after receipt of the notice under § 42-3131.08 or § 42-3131.11 shall be assessed as a tax against the real property containing the vacant building and

shall be subject to § 6-806 and shall constitute a lien against the real property containing the vacant building and the personal property of the owner.

(2) In addition to the lien provided under paragraph (1) of this section, any fees required under § 42-3131.06(a) or § 42-3131.09 that remain unpaid after receipt of the notice under § 42-3131.08 or § 42-3131.11 shall be a continuing and perpetual lien in favor of the District of Columbia upon all property, whether real or personal, of the owner, and shall have the same force and effect as a lien created by judgment. The lien shall attach to all property belonging to the owner at any time during the period of the lien, including any property acquired by the owner after the lien arises. The lien shall have priority over all other liens, except liens for District of Columbia taxes, District of Columbia water charges, and the lien under § 2-1802.03; provided, that the lien shall not be valid against a bona fide purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice by filing in the Recorder of Deeds.

(b) All fees and penalties collected under this chapter shall be deposited in the fund established under § 42-3131.01(b)(1) and shall be expended for the general administration, inspection, and abatement costs incurred in the correction of wrongful conditions in vacant buildings and other nuisance properties; provided, that if any fees and penalties are collected as a tax through the real estate tax sale process, the fees and penalties shall be deposited in the fund established under § 42-3131.01(b)(1) after an accounting has been made in accordance with § 47-1340(f).

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 14, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3131.15. Administrative review and appeal.

(a) Within 15 days after the designation of an owner's building as a vacant building, the determination of delinquency of registration or fee payment, the denial or revocation of registration, or the designation of a vacant building as a blighted vacant building, the owner may petition the Mayor for reconsideration by filing the form prescribed by the Mayor. Within 30 days after receiving the petition, the Mayor shall issue a notice of final determination.

(b) Within 45 days after the date of the notice of final determination under subsection (a) of this section, an owner may file an appeal with the Real Property Tax Appeals Commission for the District of Columbia on the form prescribed by the Mayor; provided, that the notice of final determination under subsection (a) of this section shall be a prerequisite to filing an appeal with the Real Property Tax Appeals Commission for the District of Columbia.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 15, as added Apr. 27, 2001, D.C. Law 13-281, § 101, 48 DCR 1888; Apr. 13, 2005, D.C. Law 15-354, § 62, 52 DCR 2638; Aug. 15, 2008, D.C. Law 17-216, § 3(h), 55 DCR 7500; Sept. 24, 2010,

D.C. Law 18-223, § 2042(f), 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-363, § 3(f), 58 DCR 963.)

Effect of amendments. — D.C. Law 15-354 substituted “file a request for a hearing with the Office of Administrative Hearings” for “seek administrative review by the Board of Appeals and Review, or any successor board or agency”.

D.C. Law 17-216 rewrote the section which had read as follows: “Within 10 days after a notice of a final determination by the Mayor under § 42-3131.08 or § 42-3131.11, an owner may file a request for a hearing with the Office of Administrative Hearings.”

D.C. Law 18-223 rewrote subsec. (a), which had read as follows: “(a) Within 15 days after the designation of an owner’s building as vacant, the determination of delinquency of registration or fee payment, or the denial or revocation of registration, the owner may petition the Mayor for reconsideration by filing the form prescribed by the Mayor. Within 30 days after receiving the petition, the Mayor shall issue a notice of final determination.”

D.C. Law 18-363, in subsec. (b), substituted “Real Property Tax Appeals Commission for the District of Columbia” for “Board of Real Property Assessments and Appeals”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(h) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) amendment of section, see § 3(h) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

For temporary (225 day) amendment of section, see § 2(c) of Real Property Tax Reform Temporary Amendment Act of 2010 (D.C. Law 18-153, May 22, 2010, law notification 57 DCR 5381).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(h) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) amendment of section, see § 3(h) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) amendment of section, see § 3(h) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2(c), of Real Property Tax Reform Emergency Amendment Act of 2009 (D.C. Act 18-313, February 22, 2010, 57 DCR 1645).

For temporary (90 day) amendment of section, see § 2042(f) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 42-1103.

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

Legislative history of Law 18-363. — Law 18-363, the “Real Property Tax Appeals Commission Establishment Act of 2010”, was introduced in Council and assigned Bill No. 18-530, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 28, 2011, it was assigned Act No. 18-714 and transmitted to both Houses of Congress for its review. D.C. Law 18-363 became effective on April 8, 2011.

§ 42-3131.16. Transmission of list by Mayor.

(a) Semiannually, the Mayor shall transmit to the Office of Tax and Revenue a list of buildings:

(1) Registered as vacant; provided, that for the purposes of this section and § 47-813(d-1)(5)(A-i)(i)(I)(aa), buildings for which the registration has been revoked shall also be deemed registered; and

(2) For which a notice of final determination has been issued under this subchapter [§§ 42-3131.05 through 42-3131.16] and administrative appeals have been exhausted or expired.

(b) The list shall be in the form and medium prescribed by the Office of Tax and Revenue.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 16, as added Aug. 15, 2008, D.C. Law 17-216, § 3(i), 55 DCR 7500.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Real Property Tax Reform Temporary Amendment Act of 2010 (D.C. Law 18-153, May 22, 2010, law notification 57 DCR 5381).

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(i) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2006 (D.C. Law 16-259, March 8, 2007, law notification 54 DCR 3044).

For temporary (225 day) addition, see § 3(i) of Nuisance Properties Abatement Reform and Real Property Classification Temporary Amendment Act of 2007 (D.C. Law 17-102, February 2, 2008, law notification 55 DCR 4254).

Emergency legislation. — For temporary (90 day) addition, see § 3(i) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of

2006 (D.C. Act 16-586, December 28, 2006, 54 DCR 353).

For temporary (90 day) addition, see § 3(i) of Nuisance Properties Abatement Reform and Real Property Classification Emergency Amendment Act of 2007 (D.C. Act 17-173, November 2, 2007, 54 DCR 11204).

For temporary (90 day) addition, see § 3(i) of Nuisance Properties Abatement Reform and Real Property Classification Congressional Review Emergency Act of 2008 (D.C. Act 17-436, July 16, 2008, 55 DCR 8272).

For temporary (90 day) amendment of section, see § 2(d), of Real Property Tax Reform Emergency Amendment Act of 2009 (D.C. Act 18-313, February 22, 2010, 57 DCR 1645).

Legislative history of Law 17-216. — For Law 17-216, see notes following § 42-3131.05.

Editor's notes. — Section 5(a) of D.C. Law 17-216 provided that sections 2, 3, and 4(b) and (c) shall apply to real property tax years beginning after September 30, 2006.

§ 42-3131.17. Transmission of list of blighted vacant buildings by Mayor.

(a) Semiannually, the Mayor shall transmit to the Office of Tax and Revenue a list of buildings designated by the Mayor as blighted vacant buildings for which a notice of final determination has been issued under this and administrative appeals have been exhausted or expired.

(b) The list shall be in the form and medium prescribed by the Office of Tax and Revenue.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 17, as added Sept. 24, 2010, D.C. Law 18-223, § 2042(g), 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2042(g) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

CHAPTER 31A1. ABATEMENT OF GRAFFITI.

Sec.

42-3141.01. Definitions.

42-3141.02. Nuisance.

42-3141.03. Notice of graffiti nuisance and reply.

42-3141.04. Deemed authorization to abate.

42-3141.05. Notice of violation; service of notice.

Sec.

42-3141.06. Answer and expedited hearing.

42-3141.07. Payment of abatement costs and penalties.

42-3141.08. Graffiti Abatement Fund.

42-3141.09. Collection against an owner.

42-3141.10. Graffiti abatement materials.

42-3141.11. Rules.

§ 42-3141.01. Definitions.

For the purposes of this chapter, the term:

(1) “Abate” means to effectively remove or cover.

(2) “Abatement costs” means the reasonably estimated costs incurred by the District to abate graffiti.

(3) “Deputy Chief Financial Officer” means the Deputy Chief Financial Officer for the Office of Tax and Revenue or his designee.

(4) “Graffiti” means any inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar objects that are on personal property located outdoors, or placed on trees, rocks, or other natural features, without the consent or authorization of the property owner, without regard to when that consent or authorization was given, and the graffiti is visible from a public right-of way.

(5) “Owner” means a property owner or the property owner’s designated agent unless otherwise specified.

(6) “Reply” means the response provided by the owner under § 42-3141.03(c).

(Sept. 18, 2010, D.C. Law 18-219, § 2, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — Law 18-219, the “Anti-Graffiti Act of 2010”, was introduced in Council and assigned Bill No. 18-69, which was referred to the Committee on Public Safety and the Judiciary and the Com-

mittee on Public Works and Transportation. The Bill was adopted on first and second readings on March 2, 2010, and April 20, 2010, respectively. Signed by the Mayor on May 7, 2010, it was assigned Act No. 18-396 and transmitted to both Houses of Congress for its review. D.C. Law 18-219 became effective on September 18, 2010.

§ 42-3141.02. Nuisance.

Graffiti is a nuisance and the owner of the property on which the graffiti is located shall abate the graffiti or authorize the Mayor to abate the graffiti as provided for in § 42-3141.03.

(Sept. 18, 2010, D.C. Law 18-219, § 3, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of Anti-Graffiti Emer-

gency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.03. Notice of graffiti nuisance and reply.

(a)(1) Whenever the Mayor identifies graffiti, the Mayor shall notify the owner that there is graffiti on the property that must be abated.

(2) The notification shall be provided by delivering a written notice to the property on which, or at which, the graffiti is located. The notification shall be served on the owner or the building superintendent if present, or placed on the door or similar place used for ingress.

(3) In addition, notice shall be delivered by first-class mail to the owner of the premises. If the owner cannot be identified with reasonable certainty for purposes of mail notice, the Mayor shall conspicuously post the notice on the premises or deliver a copy of the notice to the Deputy Chief Financial Officer, who shall post a copy of the notice in a conspicuous place on the property.

(b) The notice shall include reply space for the owner to notify the Mayor whether the owner:

(1) Will abate the graffiti by the date stated on the notice and, if this option is selected, whether the owner requests graffiti abatement materials;

(2) Authorizes the Mayor to abate the graffiti; or

(3) Consents to the presence of the graffiti and does not want the Mayor to abate it.

(c) The notice shall also include a deadline by when the owner must reply and shall inform the owner how to reply. The owner shall reply by either conspicuously posting the notice to the premises where it was originally left, transmitting the notice by facsimile to the number indicated on the notice, mailing it to the address indicated on the notice, returning it in person, or using any other method authorized by regulation and specified on the notice. The deadline shall be not less than 7 calendar days.

(d)(1) If the owner indicates on the reply that the owner will abate the graffiti by the date stated on the notice, and that the owner wants to receive graffiti abatement materials, the Mayor shall leave them at the property subject to the limitations set forth in § 42-3141.10.

(2) If the owner indicates on the reply that the owner will abate the graffiti, the Mayor shall return to the property no sooner than the abatement deadline stated in the notice to see whether or not the graffiti has been abated. If the graffiti has not been abated, the Mayor shall issue a notice of violation as provided for in § 42-3141.05.

(Sept. 18, 2010, D.C. Law 18-219, § 4, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 4 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.04. Deemed authorization to abate.

If the owner does not reply as provided for in § 42-3141.03(b)(1), (b)(2), or

(b)(3), the owner shall be deemed to have authorized the Mayor to abate the graffiti. The Mayor may then abate the graffiti as if the owner had provided authorization under § 42-3141.03(b)(2).

(Sept. 18, 2010, D.C. Law 18-219, § 5, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 5 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.05. Notice of violation; service of notice.

(a) If an owner elects to abate the graffiti and the graffiti has not been abated by the date stated on the notice, the Mayor may issue a notice of violation for failure to comply with § 42-3141.02.

(b)(1) The notice of violation shall be served on the owner, or the building superintendent, or the Mayor may deliver the notice by certified mail to the owner of the premises. If the owner cannot be identified with reasonable certainty, the Mayor may conspicuously post the notice on the premises alleged to be in violation and deliver a copy of the notice to the Deputy Chief Financial Officer pursuant to paragraph (2) of this subsection.

(2) The Deputy Chief Financial Officer is authorized to receive notices of violation of § 42-3141.02 on behalf of any resident or non-resident person who owns property in the District, if the person has not provided to the Deputy Chief Financial Officer a mailing address. The Deputy Chief Financial Officer shall post a copy of the notice served on the Deputy Chief Financial Officer in a conspicuous place on the property.

(Sept. 18, 2010, D.C. Law 18-219, § 6, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 6 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.06. Answer and expedited hearing.

(a) An owner who has received a notice of violation shall answer within 5 days after service of the notice of violation. At the time that an owner answers the notice of violation, the owner may request a hearing on the allegations set forth in the notice of violation. If the owner fails to answer as required in the notice of violation, the owner shall be deemed to have admitted the violation and the Office of Administrative Hearings shall issue a default judgment ordering the owner to pay abatement costs, interest, and penalties as provided for in § 42-3141.07.

(b) If an owner answers the notice of violation in the manner required in the notice of violation, the Office of Administrative Hearings shall issue a final order on that notice of violation no later than 30 days after the date on which the notice of violation was filed with the Office of Administrative Hearings.

(Sept. 18, 2010, D.C. Law 18-219, § 7, 57 DCR 4353.)

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.07. Payment of abatement costs and penalties.

(a) If a default judgment is issued under § 42-3141.06 or if, after a hearing, the Office of Administrative Hearings finds the owner responsible for the violation set forth in the notice of violation, the District may abate the graffiti and the owner (not the owner's agent) shall owe to the District 2½ times the District's abatement costs plus a penalty of \$500 for each violation.

(b) The Mayor shall bill the owner for the amount owed under subsection (a) of this section. If the amount is not paid within 30 days from the date of the bill, interest shall be assessed at the rate of 1½ % per month.

(Sept. 18, 2010, D.C. Law 18-219, § 8, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 8 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.08. Graffiti Abatement Fund.

(a)(1) There is established as a nonlapsing fund the Graffiti Abatement Fund ("Fund"), into which shall be deposited:

(A) All fines, penalties, interest, charges and costs, including abatement costs, assessed and collected pursuant to this chapter;

(B) Any funds in the Graffiti Trust Fund, established by § 22-3312.03a(g), [repealed] on the day before September 18, 2010; and

(C) Any civil fines collected as penalties under § 22-3312.04.

(2) The deposit of these monies shall be subject to the requirements of § 42-3141.09(b).

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Fund shall be used to offset the costs of implementing this chapter, the costs of graffiti abatement and prevention, and the costs of the Office of Administrative Hearings under this chapter.

(d) The Mayor shall submit to the Council an annual statement of the Fund's receipts and disbursements for the preceding year.

(Sept. 18, 2010, D.C. Law 18-219, § 9, 57 DCR 4353.)

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.09. Collection against an owner.

(a)(1) The amount to be paid under a notice of violation and any other

charges, expenses, costs, including abatement costs, penalties, and interest shall be a continuing and perpetual lien in favor of the District upon all real and personal property belonging to a person named in the notice and shall have the same force and effect as a lien created by judgment. Interest shall accrue on the amount due at the rate of $1\frac{1}{2}\%$ a month.

(2) The lien shall attach to all property belonging to the named person at any time during the period of the lien, including any property acquired by the named person after the lien arises.

(3) The lien shall have priority over all other liens, except for District taxes and District water charges; provided, that the lien shall not be valid as against any bona fide purchaser, or holder of a security interest, mechanic's lien, or other such creditor interest in the property, until notice of the lien is filed with the Recorder of Deeds. The lien shall be satisfied by payment of the amount of the lien to the District Treasurer.

(4) For reasonable cause shown, the Mayor may reduce the amount of the bill or lien.

(5) The Mayor may contract with any person to collect the amount of the lien and remunerate the person, subject to available appropriations, by fee, by a percentage of the amount collected, or both.

(b) As additional means for collection, the Mayor may enforce payment of the fines, penalties, costs, and interest imposed under this section against the real property of the owner as follows:

(1) The Mayor shall record a real property tax lien, captioned "Notice of Converted Real Property Tax Lien", with the Recorder of Deeds and in accordance with § 47-1340. The real property tax lien shall be deemed a delinquent real property tax from the date of the conversion, shall accrue interest at the rate of interest charged for delinquent real property tax, and shall be perpetual. Payment thereof shall be credited to the General Fund of the District of Columbia. The real property may be sold at tax sale, regardless of the date of the conversion, in the same manner, under the same conditions, and subject to the same impositions of interest, costs, expenses, fees, and other charges, as real property sold for delinquent real property tax.

(2) The aggregate amount of the costs, expenses, penalties, and interest secured by the lien imposed under subsection (a) of this section may appear on a real property tax bill, and the aggregate amount shall:

(A) Be deemed an additional real property tax to be collected in the same manner and under the same conditions as real property tax is collected, including the sale of the real property for delinquent tax; and

(B) Be subject to the same penalty and interest provisions as delinquent real property tax is subject as of the date of such real property tax bill.

(c) The lien under subsection (a) of this section, with penalty and interest as provided under this section, shall be converted to real property tax as of the due date for payment of the real property tax bill if payment is not made.

(d) If the lien has been converted to a real property tax lien under § 47-1340 or if the accrued amount of the lien appears on the real property tax bill, the real property tax lien shall be enforced under Chapter 13A of Title 47 [§ 47-1330 et seq.].

(Sept. 18, 2010, D.C. Law 18-219, § 10, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 10 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.10. Graffiti abatement materials.

(a) If the Mayor provides a paint voucher to an owner to abate graffiti at a particular property, the Mayor is not required to provide another paint voucher to abate graffiti at that property for the 12-month period following the date on which the paint voucher was provided.

(b) If the Mayor provides a graffiti clean-up kit to an owner to abate graffiti at a particular property, the Mayor is not required to provide another clean-up kit to abate graffiti at that property for the 12-month period following the date on which the kit was provided.

(c) The Mayor may provide other types of graffiti removal materials and, by regulation, limit the extent to which they are provided to a property owner.

(d) Nothing in this section precludes the Mayor from providing additional paint vouchers, clean-up kits, or other graffiti abatement materials for use in community anti-graffiti efforts.

(Sept. 18, 2010, D.C. Law 18-219, § 11, 57 DCR 4353.)

Emergency legislation. — For temporary (90 day) addition, see § 11 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

§ 42-3141.11. Rules.

(a) The Office of Administrative Hearings, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of § 42-3141.06.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of §§ 42-3141.02, 42-3141.03, 42-3141.04, 42-3141.05, 42-3141.07, 42-3141.08, 42-3141.09, and 42-3141.10.

(Sept. 18, 2010, D.C. Law 18-219, § 12, 57 DCR 4353.)

(Apr. 27, 2001, D.C. Law 13-281, § 401, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 402, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 403, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 404, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 405, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 406, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 407, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 408, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 409, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 410, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 411, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 412, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

(Apr. 27, 2001, D.C. Law 13-281, § 413, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

Emergency legislation. — For temporary (90 day) addition, see § 12 of Anti-Graffiti Emergency Act of 2010 (D.C. Act 18-389, May 5, 2010, 57 DCR 4332).

Legislative history of Law 18-219. — For Law 18-219, see notes following § 42-3141.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — Law 14-114, the “Housing Act of 2002”, was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3151.01.

Delegation of Authority. — Delegation of Authority Under the Anti-Graffiti Emergency Act of 2010, see Mayor's Order 2010-139, August 20, 2010 (57 DCR 7740).

Delegation of Authority Under the Anti Graffiti Act of 2010, see Mayor's Order 2010-176, November 26, 2010 (57 DCR 11421).

Editor's notes. — Section 601 of D.C. Law 13-281 provided: "The Mayor may issue rules to implement the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 in accordance with the District of Columbia Administrative Procedure Act."

CHAPTER 31B. QUICK ACQUISITION OF ABANDONED AND NUISANCE
PROPERTY.

Sec.

42-3151.01 to 42-3151.13. [Repealed].

§§ 42-3151.01 to 42-3151.13. Definitions; petition for immediate taking; deposit in court of fair market value; judgment for excess of public charges over property value; title holder; assistance to certain displaced persons; inability to qualify for hardship petition; effect on other authority; condemnation and acquisition of open, hazardous residential buildings or other structures; notice; demolition, repair, or enclosure; designation of development or redevelopment plan for property acquired; limitation on actions against the District of Columbia; report to the Council required [Repealed].

Repealed.

CHAPTER 31C. QUICK ACQUISITION OF ABANDONED AND NUISANCE PROPERTY.

<i>Subchapter I. Acquisition and Disposal of Abandoned and Deteriorated Properties</i>		Sec.
		42-3173.03. Redevelopment feasibility analysis.
Sec.		42-3173.04. Designation of potential historic structure.
42-3171.01. Definitions.		42-3173.05. Initial determination of deteriorated structure.
42-3171.02. Acquisition and redevelopment of abandoned or deteriorated property.		42-3173.06. Action by interested parties.
42-3171.03. Disposal of abandoned or deteriorated property.		42-3173.07. Final determination of deteriorated structure.
42-3171.04. Assistance to displaced persons.		42-3173.08. Duty of Mayor to demolish or enclose deteriorated structure.
<i>Subchapter II. Due Process Demolition</i>		42-3173.09. Judicial review of final determination.
42-3173.01. Definitions.		42-3173.10. Recovery of costs by the District of Columbia.
42-3173.02. Authority of the Mayor to demolish or enclose deteriorated structures.		42-3173.11. Use of funds; deposit of funds.
		42-3173.12. Nature of remedies.

Subchapter I. Acquisition and Disposal of Abandoned and Deteriorated Properties.

§ 42-3171.01. Definitions.

For the purposes of this subchapter the term:

(1) "Abandoned property" means:

(A) A structure:

(i) That is unoccupied by an owner or a tenant; and

(ii) On which the real property tax imposed by § 47-811 has not been paid in 18 months;

(B) A vacant lot on which the real property tax imposed by § 47-811 has not been paid in 18 months;

(C) A structure:

(i) That is unoccupied by an owner or tenant;

(ii) That the Mayor has determined is structurally unsafe; and

(iii) Regarding which the Mayor has issued to the owner a notice requiring that the owner cause the structure to conform with any provision of the fire code, building code, or housing code, or to demolish the structure for safety reasons, and the owner has failed to act in response to the Mayor's notice within the period of time established by statute, regulation, or the notice; or

(D) A vacant lot on which a building has been demolished.

(1A) "Blighted Area" shall have the meaning as set forth in § 2-1219.01(6) [repealed].

(2) "Deteriorated property" means real property:

(A) The Mayor has determined constitutes a threat to the public health, safety, or welfare;

(B) The Mayor has determined contributes to the blight or dilapidation of the area immediately surrounding the property; or

(C) As to which, if the real property contains a structure, the Mayor has issued to the owner a notice requiring the owner to conform the structure to any provision of the fire code, building code, or housing code, or to demolish the structure for safety reasons, and the owner has failed to act in response to the Mayor's notice within the period of time established by statute, regulation, or the notice.

(3) "Owner" means a person who holds legal title to an interest in real property as reflected in the records of the Recorder of Deeds.

(4) "Slum and blight" means one or more parcels of land, whether vacant or improved that are in a blighted area, or exhibit one or more characteristics of a blighted area.

(5) "Tenant" shall have the meaning set forth in § 42-3501.03(36).

(Apr. 27, 2001, D.C. Law 13-281, § 431, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 1, 2002, D.C. Law 14-190, § 1002(a), 49 DCR 6968; Oct. 19, 2002, D.C. Law 14-213, § 29(a), 49 DCR 8140; June 8, 2006, D.C. Law 16-119, § 2, 53 DCR 2609; Mar. 25, 2009, D.C. Law 17-353, §§ 115, 182, 56 DCR 1117.)

Effect of amendments. — D.C. Law 14-190 made nonsubstantive changes in par. (2)(B).

D.C. Law 14-213, in par. (4), validated a previously made technical correction.

D.C. Law 16-119 added par. (1A); and rewrote par. (4), which had read as follows: "(4) 'Slum and blight' means properties in a blighted area, as that term is defined in § 2-1219.01(6)."

D.C. Law 17-353 validated previously made technical corrections in pars. (1A), (2)(C), and (4).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1002(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-114. — Law 14-114, the "Housing Act of 2002", was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 42-204.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 16-119. — Law 16-119, the "Home Again Initiative Community

Development Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-403 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 23, 2006, it was assigned Act No. 16-336 and transmitted to both Houses of Congress for its review. D.C. Law 16-119 became effective on June 8, 2006.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Short title. — Short title of title X of Law 14-190: Section 1001 of D.C. Law 14-190 provided that title X of the act may be cited as the Quick Acquisition of Abandoned and Nuisance Property Amendment Act of 2002.

Delegation of Authority. — Delegation of Authority Under D.C. Law 13-281, the "Abatement and Condemnation of Nuisance Property Omnibus Amendment Act of 2002", see Mayor's Order 2002-33, March 1, 2002 (49 DCR 1875).

Delegation of Authority to the Director of the Department of Housing and Community Development, see Mayor's Order 2007-209, September 27, 2007 (55 DCR 133).

Editor's notes. — Section 1101 of D.C. Law 14-114 provided: "The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall promulgate rules to implement this act."

§ 42-3171.02. Acquisition and redevelopment of abandoned or deteriorated property.

(a) The Mayor may acquire abandoned property or deteriorated property for the public purpose of eliminating slum and blight:

- (1) Pursuant to §§ 16-1311 through 16-1321;
- (2) Through gift or donation;
- (3) By assignment; or
- (4) Through voluntary sale by the owner.

(b) The Mayor may develop or redevelop abandoned or deteriorated property acquired under this section, may demolish structures on the property, and may take any other lawful action to eliminate blight or unsafe conditions on the property.

(c) The Mayor shall not acquire deteriorated property which is occupied and from which tenants shall, or will likely, be displaced unless the Mayor has first made available for public review and comment, for a period of at least 30 days, a plan for the relocation of the displaced tenants.

(d) Before the acquisition of a property under this subchapter, the Mayor shall issue a memorandum describing the Mayor's plan for the development or disposition of the property, describing any potential displacement of tenants and plans for the relocation of displaced tenants, and setting forth a timetable for the development or disposition of the property.

(Apr. 27, 2001, D.C. Law 13-281, § 432, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

Delegation of Authority. — Delegation of Authority to the Deputy Mayor for Planning and Economic Development to Acquire Abandoned or Deteriorated Properties for the Purpose of Eliminating Slum and Blight, see Mayor's

Order 2002-110, July 19, 2002 (49 DCR 6873).

Delegation of Authority to Approve or to Disapprove the Acquisition and Disposition of Real Estate, by Sale, Lease or Otherwise, see Mayor's Order 2003-161, November 17, 2003 (50 DCR 10197).

§ 42-3171.03. Disposal of abandoned or deteriorated property.

(a) The Mayor may dispose of abandoned or deteriorated property acquired under § 42-3171.02, or acquired by any other means, including property the Mayor has altered or improved, through a competitive process or through a negotiated sale; provided, that:

(1) Before disposition of the property, there shall be a public hearing on the proposed terms and conditions of the disposition after at least 30 days public notice; or

(2) The Mayor shall transmit to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, a proposed resolution providing for the disposition of the property. The proposed resolution shall contain a description of the property to be disposed of and the proposed method and terms and conditions of the disposition. If the Council

does not approve or disapprove the proposed resolution within the 60-day period, the proposed resolution shall be deemed approved.

(b)(1) The Mayor may dispose of property acquired under § 42-3171.02 through a request for offers from adjacent property owners. Before accepting an offer under this subsection, the Mayor shall notify adjacent property owners:

(A) That they may make an offer to the Mayor to purchase the property within a time period established by the Mayor;

(B) Of the minimum acceptable purchase price and any mandatory terms or conditions of an acceptable offer; and

(C) That the offer shall be in writing and contain such information as the Mayor may by regulation prescribe.

(2) If only one adjoining property owner offers to purchase the property at or above the minimum acceptable purchase price and the offer meets all mandatory terms and conditions of an acceptable offer, the Mayor shall accept the offer.

(3) If more than one adjoining property owner offers to purchase the real property at or above the minimum acceptable purchase price and the offers meet all mandatory terms and conditions of an acceptable offer, the Mayor shall accept the offer with the highest purchase price.

(c) In transferring a property, the Mayor may forgive up to 50% of the amount of any outstanding taxes owed on the property, and may forgive in full any penalties or interest accrued on the taxes owed, if the property is transferred to a low-income household or to a nonprofit housing entity providing housing opportunities to low-income households; provided, that:

(1) The transferee, if a low-income household, shall maintain the property as his or her principal place of residence for at least 5 years;

(2) The transferee, if a nonprofit housing entity, shall:

(A) If the property is developed for homeownership opportunities, require that each homeowner maintain the property as his or her principal place of residence for at least 5 years;

(B) If the property is developed for rental opportunities, maintain the rental units as units affordable to, and occupied by, low-income, very low-income, or extremely low-income households for not less than 20 years; and

(3) The transferee shall complete rehabilitation of the property within 18 months after the property is transferred.

(Apr. 27, 2001, D.C. Law 13-281, § 433, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 1, 2002, D.C. Law 14-190, § 1002(b), 49 DCR 6968; Oct. 19, 2002, D.C. Law 14-213, § 29(b), 49 DCR 8140; Aug. 16, 2008, D.C. Law 17-219, § 2012, 55 DCR 7598.)

Effect of amendments. — D.C. Law 14-190 made nonsubstantive changes in subsec. (a)(1). D.C. Law 14-213 redesignated subsec. (d) as subsec. (c).

D.C. Law 17-219, in subsec. (a), inserted “, or acquired by any other means,” following “acquired under § 42-3171.02”.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 1002(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 42-204.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 42-1103.

Short title. — Short title: Section 2011 of D.C. Law 17-219 provided that subtitle E of title II of the act may be cited as the “Disposi-

tion of Abandoned and Deteriorated Property Amendment Act of 2008”.

Resolutions. — Resolution 17-220, the “Blighted Real Property Disposition Emergency Approval Resolution of 2007”, was approved effective July 5, 2007.

§ 42-3171.04. Assistance to displaced persons.

If an occupant or tenant is displaced by the acquisition, development, redevelopment, or disposition of an abandoned or deteriorated property under this subchapter, the Mayor shall offer to the owner or tenant assistance under § 6-331.01; § 6-333.01; or § 6-333.02.

(Apr. 27, 2001, D.C. Law 13-281, § 434, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

Subchapter II. Due Process Demolition.

§ 42-3173.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Department” means the Department of Housing and Community Development.

(2) “Deteriorated structure” means a structure that:

(A) Is unoccupied;

(B) The Mayor has determined:

(i) Constitutes a threat to the public health, safety, or welfare; or

(ii) Contributes to the deterioration or dilapidation of the community in which the structure is located; and

(C) Violates one or more provisions of the District of Columbia Construction Codes, as defined in subsection 101.2 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 101.2), or the District of Columbia Housing Code, set forth in Title 14 of the District of Columbia Municipal Regulations (14 DCMR § 100 et seq.).

(3) “Enclose” means to use barricades, boards, fences, or other means to preclude access, including access by environmental elements, to a structure or site.

(4) “Interested party” means, with respect to a deteriorated structure:

(A) An owner, as recorded in the real estate tax assessment records of the District of Columbia;

(B) A titleholder, as reflected in the records of the Recorder of Deeds; or

(C) A lienholder, as reflected in the records of the Recorder of Deeds.

(5) “Site” means the deteriorated structure and the lot or lots on which the structure is located.

(6) “Sufficient action” means the action specified by the Mayor pursuant to § 42-3173.05(a)(8).

(7) “Unoccupied” means not occupied by an owner or a tenant, as defined in § 42-3501.03(36).

(Apr. 27, 2001, D.C. Law 13-281, § 441, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 29(c), 49 DCR 8140.)

Effect of amendments. — D.C. Law 14-213, in par. (6), substituted “§ 42-3173.05(a)(7)” for “§ 42-3173.05(a)(8)”.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 14-114, the “Housing Act of 2002”, see Mayor’s Order 2003-39, March 21, 2003 (50 DCR 2508).

§ 42-3173.02. Authority of the Mayor to demolish or enclose deteriorated structures.

(a) The Mayor may determine whether any structure in the District of Columbia is a deteriorated structure.

(b) The Mayor may demolish or enclose a deteriorated structure if:

(1) The Mayor takes the actions required by §§ 42-3173.03 and 42-3173.04;

(2) A notice of initial determination is prepared and posted under § 42-3173.05;

(3) An interested party does not take sufficient action by the latest of:

(A) Thirty days after the notice of initial determination is mailed;

(B) Thirty days after the notice of initial determination is published; or

(C) A date specified by the Mayor which is not earlier than the date specified in subparagraph (A) or (B) of this paragraph;

(4) A notice of final determination is prepared and posted under § 42-3173.07; and

(5)(A) A petition for review challenging the final determination has not been filed under § 42-3173.09 within the time period specified by § 42-3173.09; or

(B) A petition for review challenging the final determination has been filed under § 42-3173.09 within the time period specified by § 42-3173.09, and the Superior Court of the District of Columbia, the District of Columbia Court of Appeals, or other court of competent jurisdiction has issued an order authorizing the Mayor to act, enters final judgment against the petitioner, or dismisses the petition.

(Apr. 27, 2001, D.C. Law 13-281, § 442, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.03. Redevelopment feasibility analysis.

(a) Prior to posting, mailing, publishing, or filing a notice of initial determi-

nation of a deteriorated structure under § 42-3173.05(b), the Mayor shall request from the Department an analysis of the cost of rehabilitating the structure and the feasibility and likelihood that the site will be redeveloped without demolition of the structure. Upon requesting the analysis, the Mayor shall cause notice of the request to be published in the District of Columbia Register. The Mayor shall consider the analysis provided by the Department in determining whether to issue a notice of initial determination under § 42-3173.05.

(b) If the Department does not provide an analysis to the Mayor within 60 days after the Mayor requests an analysis under subsection (a) of this section, the Mayor may post, mail, publish, or file the notice of initial determination under § 42-3173.05(b).

(Apr. 27, 2001, D.C. Law 13-281, § 443, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.04. Designation of potential historic structure.

(a) Prior to posting, mailing, publishing, or filing a notice of initial determination under § 42-3173.05(b), the Mayor shall file with the Historic Preservation Review Board a notice which shall include the following information:

(1) The address of the deteriorated structure or, if the address is not available or does not adequately describe the location of the structure, a description of the location of the structure that is sufficient for its identification;

(2) A photograph of the structure clearly documenting the appearance of the structure and its immediate surroundings; and

(3) A statement that the Mayor intends to make a determination that the structure is a deteriorated structure.

(b) Within 60 days after receiving the notice from the Mayor, the Historic Preservation Review Board shall make a preliminary determination whether or not there is a substantial possibility that the structure is eligible for designation as a historic landmark or a contributing building in a historic district.

(c) The Mayor shall not issue a notice of initial determination under § 42-3173.05 and shall not demolish a structure under this subchapter unless:

(1) The structure is not a historic landmark, a contributing building in a historic district, or a structure for which the Historic Preservation Review Board has made a preliminary determination that there is a substantial possibility that the structure is eligible for designation as a historic landmark or a contributing building in a historic district;

(2) The structure is a historic landmark or a contributing building in a historic district, or the Historic Preservation Review Board makes a preliminary determination that there is a substantial possibility that the structure is eligible for designation as a historic landmark or a contributing building in a historic district, and:

(A) The Mayor determines, pursuant to the procedures and standards of subchapter I of Chapter 11 of Title 6, that demolition of the structure is necessary in the public interest, as provided in § 6-1104(e); or

(B) The Mayor intends to enclose, but not demolish, the structure; or

(3) The Historic Preservation Review Board does not make a determination under subsection (b) of this section within 60 days after receiving the notice filed by the Mayor under subsection (a) of this section, and the structure is not a historic landmark or a contributing structure in a historic district.

(Apr. 27, 2001, D.C. Law 13-281, § 444, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.05. Initial determination of deteriorated structure.

(a) If the Mayor determines that a structure is a deteriorated structure, the Mayor shall prepare a notice of initial determination which shall include the following information:

(1) The address of the deteriorated structure or, if the address is not available or does not adequately identify the location of the structure, a description of the location of the structure that is sufficient for its identification;

(2) A statement that the Mayor has determined that the structure is a deteriorated structure and the basis for the Mayor's determination;

(3) A description of the analysis of the Department under § 42-3173.03 and a statement regarding the Mayor's consideration of the analysis or, if no analysis was provided, a summary of the Mayor's reason for issuing the notice of initial determination absent the analysis;

(4)(A) A statement that the structure is not a historic landmark, a contributing building in a historic district, or a structure for which the Historic Preservation Review Board has made a preliminary determination that there is a substantial possibility that the structure is eligible for designation as a historic landmark or a contributing building in a historic district; or

(B) A statement that the structure is a historic landmark or a contributing building in a historic district or the Historic Preservation Review Board has made a preliminary determination under § 42-3173.04 that there is a substantial possibility that the structure is eligible for designation as a historic landmark or a contributing building in a historic district, and a statement that:

(i) The Mayor has determined, pursuant to the procedures and standards of subchapter I of Chapter 11 of Title 6, that demolition of the structure is necessary in the public interest, as provided in § 6-1104(e); or

(ii) The Mayor intends to enclose, but not demolish, the structure;

(5) A statement that the Mayor intends to demolish or enclose the deteriorated structure if an interested party does not take sufficient action within 30 days after the mailing or publication of the notice, whichever is later;

(6) If the Mayor intends to demolish the structure, a statement describing why the Mayor intends to demolish, rather than enclose, the structure;

(7) A statement that the Mayor shall not demolish or enclose the structure if sufficient action is taken within 30 days after the mailing or publication of the notice, whichever is later;

(8) A description of the action which, if taken, shall be considered sufficient action; and

(9) A summary statement of the final determination procedure and judicial review provided by this chapter.

(b) After the notice is prepared under subsection (a) of this section, the Mayor shall:

(1) Post the notice on the deteriorated structure;

(2) Mail the notice to all interested parties by certified mail, return receipt requested;

(3) Publish the notice once in a newspaper of general circulation in the District of Columbia;

(4) Publish the notice in the District of Columbia Register.

(5) Transmit the notice to the advisory neighborhood commission in which the structure is located; and

(6) File the notice with the Recorder of Deeds.

(Apr. 27, 2001, D.C. Law 13-281, § 445, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.06. Action by interested parties.

Interested parties shall have 30 days after the mailing or publication of the notice under § 42-3173.05, whichever is later, to take sufficient action.

(Apr. 27, 2001, D.C. Law 13-281, § 446, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.07. Final determination of deteriorated structure.

(a)(1) If sufficient action has not been taken within the 30-day period of § 42-3173.06, the Mayor shall prepare a notice of final determination.

(2) Notwithstanding paragraph (1) of this subsection, the Mayor may revoke the notice of initial determination or hold in abeyance further action under this subchapter if, prior to the end of the 30-day period, an interested party:

(A)(i) Submits to the Mayor a written plan for the prompt completion of the sufficient action; and

(ii) The Mayor approves the plan with or without conditions; or

(B) Submits to the Mayor written reasons why the Mayor should not take the action specified in § 42-3173.05(a)(5); provided, that, in such case, the Mayor may also amend the notice of initial determination.

(3) The Mayor may extend the 30-day period for 30 days or less upon the written request of an interested party and for good cause shown.

(b) The notice of final determination shall be prepared within 30 days after the end of the 30-day period or within 30 days after the end of any extension of the 30-day period.

(c) The notice of final determination required by subsection (a) and (b) of this section shall include:

(1) The address of the deteriorated structure or, if the address is not available or does not adequately identify the location of the structure, a description of the location of the deteriorated structure that is sufficient for its identification;

(2) A statement that the Mayor has determined that the structure is a deteriorated structure and the basis for the Mayor's determination that the structure is a deteriorated structure;

(3) The date or dates on which the notice of initial determination under § 42-3173.04 was posted, mailed, published, and filed;

(4) A statement that sufficient action was not taken within the specified time period;

(5) A statement that the Mayor intends to demolish or enclose the deteriorated structure; and

(6) A statement that interested parties have 30 days from the date of the mailing of the notice of final determination to file a petition for review in the Superior Court of the District of Columbia seeking judicial review of the Mayor's final determination and that the filing of the petition shall stay final action by the Mayor to demolish or enclose the deteriorated structure until a judicial order is entered.

(d) After the notice of final determination is prepared, the Mayor shall:

(1) Post the notice on the deteriorated structure;

(2) Mail the notice to all interested parties by certified mail, return receipt requested; and

(3) File the notice with the Recorder of Deeds.

(Apr. 27, 2001, D.C. Law 13-281, § 447, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 29(d), 49 DCR 8140.)

Effect of amendments. — D.C. Law 14-213, in subsec. (a)(2)(B), substituted “§ 42-3173.05(a)(5)” for “§ 42-3173.05(a)(4)”.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

§ 42-3173.08. Duty of Mayor to demolish or enclose deteriorated structure.

(a) If a petition for review is not filed under § 42-3173.09 within the time

period specified in § 42-3173.09, the Mayor shall demolish or enclose the deteriorated structure within 120 days after the notice of final determination has been mailed or filed, whichever is earlier.

(b) If a petition for review is filed under § 42-3173.09 within the time period specified in § 42-3173.09, the Mayor shall demolish or enclose the deteriorated structure within 120 days after the court issues an order authorizing the Mayor to act, enters final judgment against the petitioner, or dismisses the petition.

(Apr. 27, 2001, D.C. Law 13-281, § 448, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.09. Judicial review of final determination.

(a) Within 30 days after the date of the mailing of the notice of final determination under § 42-3173.07, an interested party may file a petition for review in the Superior Court of the District of Columbia challenging the final determination.

(b) If a petition has been filed under subsection (a) of this section and the Mayor has been served with the petition, the Mayor shall not demolish or enclose the deteriorated structure under the authority of this subchapter until the court issues an order authorizing the Mayor to act, enters final judgment against the petitioner, or dismisses the petition.

(Apr. 27, 2001, D.C. Law 13-281, § 449, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.10. Recovery of costs by the District of Columbia.

(a) Within 120 days after a deteriorated structure is enclosed or demolished under this subchapter, the Mayor shall determine the total costs incurred by the District to bring about the demolition or enclosure. The total costs shall:

- (1) Include all reasonable costs, including administrative costs;
- (2) Include the cost of repairing damage to adjoining premises; and
- (3) Be reduced by the amount, if any, received from the sale of old material.

(b)(1) The Mayor shall assess the total costs determined under subsection (a) of this section as a tax on the lot on which the deteriorated structure stands or stood.

(2) A tax assessed under this section may be paid without interest within 60 days after the date the tax is assessed. Interest of 18% per annum shall be charged on the unpaid portion of the tax, if any, and interest on the unpaid portion of the tax shall accrue from the date the tax was assessed.

(3) If a portion of the tax assessed under this section remains unpaid one year after the date the tax was assessed, the property against which the tax was assessed may be sold for the tax or unpaid portion of the tax, with interest and penalties thereon, at the next tax sale in the same manner and under the same conditions as property sold for delinquent general taxes.

(4) In selling a property tax lien under paragraph (3) of this subsection, the Mayor may forgive up to 50% of the amount of any outstanding taxes owed on the property, and may forgive in full any penalties or interest accrued on the taxes owed, if the property is transferred to a low-income household, as defined in § 42-2851.02(10), or a nonprofit housing entity providing housing opportunities to low-income households; provided, that:

(A) The transferee, if a low-income household, shall maintain the property as his or her principal place of residence for at least 5 years;

(B) The transferee, if a nonprofit housing entity, shall:

(i) If the property is developed for homeownership opportunities, require that the homeowner maintain the property as his or her principal place of residence for at least 5 years;

(ii) If the property is developed for rental opportunities, maintain the rental units as units affordable to, and occupied by, low-income, very low-income, or extremely low-income households for not less than 20 years; and

(C) The transferee shall complete rehabilitation of the property within 18 months after the property is transferred.

(Apr. 27, 2001, D.C. Law 13-281, § 450, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.11. Use of funds; deposit of funds.

(a) Amounts collected by the District of Columbia under this subchapter shall be deposited into the fund established by § 42-3131.01(b)(1).

(b) Amounts in the fund established by § 42-3131.01(b)(1), may be used to pay the costs incurred by the District to demolish or enclose a structure under this subchapter.

(Apr. 27, 2001, D.C. Law 13-281, § 451, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

§ 42-3173.12. Nature of remedies.

The remedies set forth in this subchapter shall be cumulative and not exclusive.

(Apr. 27, 2001, D.C. Law 13-281, § 452, as added Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468.)

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-3171.01.

SUBTITLE VII. RENTAL HOUSING.

CHAPTER 32. LANDLORD AND TENANT.

Sec.

- 42-3201. Notice to quit — Unnecessary with lease for certain term; landlord's right to immediate possession.
- 42-3202. Notice to quit — Tenancies by sufferance; apportionment of rent.
- 42-3203. Notice of termination — Tenancies at will.
- 42-3204. Notice of termination — Tenancies by sufferance; apportionment of rent.
- 42-3205. Notice not to be recalled without consent; effect of expiration of notice.
- 42-3206. Service of notice to quit.
- 42-3207. Refusal to surrender possession; double rent.
- 42-3208. Parties may agree to alternate notice provisions; waiver.
- 42-3209. Recovery of real and personal property leased together.
- 42-3210. Action in ejectment — When proper.
- 42-3211. Action in ejectment — Claims for arrears of rent, double rent, and waste; jurisdiction of court; money judgment.
- 42-3212. Consolidation of actions for arrears of rent and possession.
- 42-3213. Landlord's lien for rent — Time of existence.
- 42-3214. Landlord's lien for rent — How enforced.
- 42-3215. Landlord's lien for rent — When attachment issuable; executing officer's power of entry.
- 42-3216. Landlord's lien for rent — Property subject to lien not to be executed on by another without payment of rent due; when rent in arrears exceeds 3 months.
- 42-3217. Distress not unlawful and party making it not trespasser ab initio because of irregularity; special damages recoverable; costs; tender of amends defeats recovery.
- 42-3218. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.
- 42-3219. Representatives of life tenant may recover proportion of rent from under-tenant.
- 42-3220. Action in debt may be brought for rent in arrears under lease or demise for life.

Sec.

- 42-3221. Action by landlord for use and occupation of property where no deed; parol agreement as evidence of quantum of damages.
- 42-3222. Lease under control of a person with a mental disability — Surrender and renewal; guardian or committee; court order.
- 42-3223. Leases under control of a person with a mental disability — Lease pursuant to provisions of § 42-3222 valid.
- 42-3224. Leases under control of a person with a mental disability — Money received for renewal paid to guardian for benefit of person with a disability; characterization of money at death of person with a disability.
- 42-3225. Lease held by an infant or person with a mental disability — Surrender and renewal; guardian or committee; court order.
- 42-3226. Lease held by an infant or person with a mental disability — Costs of renewal chargeable to estate of infant or person with a disability or deemed charge upon leasehold.
- 42-3227. Lease held by an infant or person with a mental disability — New leases to be of same nature and subject to same liabilities as surrendered leases.
- 42-3228. Lease held by an infant or person with a mental disability — Renewed lease valid.
- 42-3229. Surrender for new lease good without surrender of underleases; underleases continue unaffected; all rights and remedies to continue.
- 42-3230. Grant or assignment of reversion of premises or by lessee not to affect rights or duties under lease.
- 42-3231. Grants of remainders, reversions, and rents good without attornment; payment of rent to grantor without notice valid.
- 42-3232. Fraudulent attornment void; possession not changed by such attornment; limitation on scope of provisions.

§ 42-3201. Notice to quit — Unnecessary with lease for certain term; landlord's right to immediate possession.

When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1218.)

Cross references. — Alterations to units after notice to vacate, prohibition, see § 6-731.01 et seq.

Ejectment proceedings, see § 16-1110.

Prior Codifications. — 1981 Ed., § 45-1401.

1973 Ed., § 45-901.

CASE NOTES

ANALYSIS

Continuation of possession after term.

Defenses.

In general.

Notice to quit.

Rent control laws.

Tenancy by sufferance.

Continuation of possession after term.

Landlord was entitled to possession of the leased premises upon expiration of the commercial lease term, even if landlord committed a breach of the lease contract by rendering the premises "uninhabitable" due to construction work. *Pinzon v. A & G Props.*, 874 A.2d 347, 2005 D.C. App. LEXIS 207 (2005).

Where, even though tenant had a one-year lease, landlord had an established policy of allowing tenants to remain as month-to-month tenants after the expiration of a fixed term of lease, and where landlord abandoned that established policy with respect to one tenant who had just been elected president of the tenants' association, tenant was entitled to present evidence, in defense of possessory action, to demonstrate that landlord was engaged in a retaliatory eviction notwithstanding statutory provision that a landlord is entitled to possession without notice at the expiration of a fixed term. D.C. Code § 45-901. *Golphin v. Park Monroe Associates*, 353 A.2d 314, 1976 D.C. App. LEXIS 475 (1976).

Where tenant was merely continuing in possession after expiration of lease against will of landlord, without payment of rent, tenant was not entitled to notice to quit. D.C. Code 1951, § 45-901. *Nickles v. Sullivan*, 97 A.2d 920, 1953 D.C. App. LEXIS 150 (Cr.App. 1953).

Fact that landlord whose tenants were required under lease to surrender premises at expiration of term, did not forcibly evict tenants from premises at expiration of term, did not file

suit for possession for two weeks after lease expired, and that tenants, with landlord paying the bills, continued to furnish heat and hot water for other tenants in building as they were required to do under lease, did not create a tenancy by sufferance entitling tenants to thirty-day notice to quit possession, where tenants continued in possession against wishes of landlord. D.C. Code, 1940, §§ 45-820, 45-901. *Williams v. John F. Donohoe & Sons*, 68 A.2d 239, 1949 D.C. App. LEXIS 234 (Cr.App. 1949).

The fact that tenant continued in possession of premises after expiration of term lease did not create a "tenancy by sufferance" so as to require landlord to give 30 day notice, where landlord brought action for possession immediately upon expiration of term and continuation in possession was result of temporary injunction order obtained by tenant and landlord rejected rent offered by tenant, notwithstanding landlord accepted damages for wrongful suing out of temporary restraining order. D.C. Code 1940, §§ 45-820, 45-901. *Bell v. Westbrook*, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

Defenses.

In the unique context of a landlord's summary suit for possession, a defense premised upon a failure of the landlord to perform other obligations is inappropriate; such a failure on the part of the landlord is irrelevant in assessing the propriety of possessory relief, for a tenant is not entitled to withhold rent based on any other asserted breach of contract. *Pinzon v. A & G Props.*, 874 A.2d 347, 2005 D.C. App. LEXIS 207 (2005).

In general.

Since landlord would not be in a position to rent unit to a paying tenant if litigation was permitted to continue with no funds in registry and with tenant on premises and would con-

tinue to be deprived of funds which he might well need to pay his mortgage and to maintain other units, and tenant would be affected only insofar as he was precluded from continuing to live in a unit for which he was demonstrably unable to pay rent, landlord was entitled to possession of premises for failure to make one or more payments required by protective order, and tenant was not deprived of due process by disposition of claim on merits without a hearing. D.C. Code 1973, §§ 16-1501 et seq., 45-901 et seq.; U.S. Const. Amend. 5. *Mahdi v. Poretsky Management, Inc.*, 433 A.2d 1085, 1981 D.C. App. LEXIS 335 (1981).

When parties contract for a definite lease term no notice to quit need be given when the term expires. D.C. Code 1940, § 45-901. *Keuroglian v. Wilkins*, 88 A.2d 581, 1952 D.C. App. LEXIS 165 (Cr.App. 1952).

Where rejection by trial court of an offer by tenants to prove that they had an oral agreement with deceased landlord to give them a lease through January 31, 1950, was assigned by tenants as error, but briefs on appeal were not filed until subsequent to the terminal date specified, the issue was moot, and court would not consider admissibility of the proffered evidence, or constitutionality of amendment to the Survivor's Testimony statute, under the due process clause. D.C. Code 1940, §§ 14-302, 45-901, 45-902; U.S. Const. Amend. 5. *Alpert v. Wolf*, 73 A.2d 525, 1950 D.C. App. LEXIS 143 (Cr.App. 1950).

The fact that landlord who immediately brought at expiration of term lease, an action for recovery of possession of leased premises, accepted damages from tenant for wrongful suing out of order temporarily restraining landlord from further proceeding with the action, did not constitute waiver of landlord's right to sue for recovery of premises. D.C. Code 1940, § 45-901. *Bell v. Westbrook*, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

Landlord who filed on January 2, 1946, a suit for possession of premises was not required to first give a 30 day notice to quit, notwithstanding term lease expired December 31, 1945, since January 1, 1946, being a legal holiday, the statute authorizing recovery of possession without notice immediately upon expiration of term was complied with. D.C. Code 1940, § 45-901. *Bell v. Westbrook*, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

Where lessee of one portion of premises occupied, added space as subtenant of second lessee, and by supplemental agreement with landlord proposed to occupy added space under covenants of original lease if second lessee vacated, and both leases expired before second lessee vacated, and lessor did not recognize lessee as a tenant of added space by accepting rent from him for such space, lessee occupied added space as a subtenant holding over, and since second

lessee had no right to a 30 day notice to vacate, his lease having expired, lessee, as subtenant, also was without right to such notice. D.C. Code 1940, §§ 45-901, 45-904. *Thayer v. Brainerd*, 47 A.2d 787, 1946 D.C. App. LEXIS 145 (Cr.App. 1946).

Notice to quit.

Notice provisions in this section are superseded by notice provisions in § 45-2551 in requiring written notice to quit in cases where a lease for a definite term has come to an end. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

Rent control laws.

Although District of Columbia Rent Control Regulation governing eviction procedures under the District's rent control program is in conflict with District of Columbia Code providing that a tenant whose lease has expired may be evicted without service of a notice to quit and with related Code provision which does not require that a notice to quit contain a reason therefor, the conflicting sections of the Code, being first enacted, yield to the more recently enacted rent control regulations. D.C. Code §§ 45-901, 45-904, 45-1621 et seq. *Jack Spicer Real Estate, Inc. v. Gassaway*, 353 A.2d 288, 1976 D.C. App. LEXIS 485 (1976).

Tenancy by sufferance.

The fact that landlord called tenant a "tenant by sufferance" in complaint in action for possession of premises filed immediately upon expiration of term lease, did not create a "tenancy by sufferance" so as to require landlord to first give tenant a 30 day notice since quoted term was a legal conclusion. D.C. Code 1940, §§ 45-820, 45-901. *Bell v. Westbrook*, 50 A.2d 264, 1946 D.C. App. LEXIS 184 (Cr.App. 1946).

Where landlord gave tenant permission to install an air cooling system for leased premises and thereafter gave tenant "permission to use" certain space not covered by lease for purpose of installing parts of the air cooling machinery, the language used did not create a "tenancy by sufferance" so as to require landlord to give tenant a 30 day notice to quit after expiration of lease with respect to the space permissively used. D.C. Code 1940, §§ 45-901, 45-904. *Thayer v. Brainerd*, 47 A.2d 787, 1946 D.C. App. LEXIS 145 (Cr.App. 1946).

Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay

rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the landlord wishes to retake possession for one of the reasons specified in § 45-2551. In all cases save

(1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (Chapter 25 of this title). Thus, in effect, the Act creates residential tenancies of indefinite duration. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

§ 42-3202. Notice to quit — Tenancies by sufferance; apportionment of rent.

A tenancy from month to month, or from quarter to quarter, may be terminated by a 30 days notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1219.)

Cross references. — Alterations to units after notice to vacate, prohibition, see § 6-731.01 et seq.

Prior Codifications. — 1981 Ed., § 45-1402.
1973 Ed., § 45-902.

CASE NOTES

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Action for possession.

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but, in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Municipal court of District of Columbia had jurisdiction of civil suit brought by the United States as landlords seeking recovery of possession of real property situated within the District of Columbia. D.C. Code 1940, §§ 11-306, 11-735 to 11-737, 11-755. *Witteck v. U.S.*, 171 F.2d 8, 1948 U.S. App. LEXIS 3227 (C.A.D.C. 1948).

Where landlord obtained judgment for possession of the premises, it thereby terminated the leasehold and any obligation to pay rent. *BDC Capital Props., L.L.C. v. Quan Trinh*, 307 F.Supp.2d 12, 2004 U.S. Dist. LEXIS 3525 (2004).

Although service of notice to quit may be waived, it is nevertheless a condition precedent to landlord's suit for possession. D.C. Code 1981, § 45-1402. *Jamison v. S & H Associates*, 487 A.2d 619, 1985 D.C. App. LEXIS 293 (1985).

Landlord who chose to rely upon expiration of 30-day notice to quit, rather than upon apparently unpaid past rent, waived right to claim rental arrearages in proceeding for possession of premises, and could not have amended complaint to assert claim for rent due, though he was free to seek recovery of back rent in separate action. D.C. Code § 45-902. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Although service of notice to quit is not jurisdictional and can be waived, it is a condition precedent to the landlord's suit for possession. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

Sufficient notice of termination of a month to month tenancy does not in and of itself allow institution of an action for possession, since notice merely cuts off future expectancy of a continuation of the tenancy for one or more terms, and thereupon a tenancy for the terminal month runs its course, and upon the occurrence of both events landlord may maintain action for possession, as tenant is then holding over. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Where tenancy was one from month to month which commenced to run on the first day of the month, and landlord served tenant with a notice to terminate tenancy on January 2 so that the thirtieth day of notice was February 1, which was the first day of the new month, possessory action commenced on February 19 was premature. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Commencement of tenancy.

Provision of lease of governmentally assisted dwelling which stated that the first term of the lease "shall commence on the 18th day and continue through the last day of January, 1974" and that "This lease shall be automatically renewed for successive terms of one month each at the rent of \$36.00 per month" was not unreasonably ambiguous as to the date of commencement of the tenancy but evidenced an intent to create two separate terms of tenancy, the first term expiring the last day of January, 1974, with a new term automatically commencing on February 1 and continuing on a month-to-month basis; therefore, notice to quit which expired on June 30 and required tenant to vacate on or before July 1 sufficiently complied with statute which requires that notice to quit expire on date of commencement of tenancy. D.C. Code §§ 5-103a, 45-902. *District of Columbia Dep't of Housing & Community Development v. Pitts*, 370 A.2d 1377, 1977 D.C. App. LEXIS 443 (1977).

Due process.

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. D.C. Code 1951, §§ 45-902, 45-910; United States Housing Act, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; Independent Offices Appropriation Act of 1953, § 101 as amended 42 U.S.C. § 1411c. *Rudder v. U.S.*, 226 F.2d 51, 1955 U.S. App. LEXIS 3014 (C.A.D.C. 1955).

Attempted termination of tenancy by United States as landlord for sole reason that tenants

refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was, without regard to issue of constitutionality of Gwinn Amendment, providing that certain units should not be occupied by any member of organization designated as subversive, arbitrary and violative of due process requirements. D.C. Code 1951, §§ 45-902, 45-910; Executive Order No. 9835, 5 U.S.C. § 631 note; United States Housing Act, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; Independent Offices Appropriation Act of 1953, § 101 as amended 42 U.S.C. § 1411c. *Rudder v. U.S.*, 226 F.2d 51, 1955 U.S. App. LEXIS 3014 (C.A.D.C. 1955).

Where District of Columbia Emergency Rent Act was not applicable to United States bringing dispossession proceedings against tenant in Municipal Court for the District of Columbia, tenant was not deprived of due process of law because of failure of the United States to comply with landlord and tenant rule of Municipal Court requiring that the landlord show grounds for possession under such act. D.C. Code 1940, § 45-1601 et seq. *Wittek v. U.S.*, 54 A.2d 747, 1947 D.C. App. LEXIS 163 (Cr.App. 1947).

Expiration of notice.

Landlord may file action for possession of leased residential premises alleging violation of obligation of tenancy other than nonpayment of rent if tenant has not corrected violation within 30 days after receiving notice to correct violation or vacate, without regard to statutory notice to quit timing requirement that notice expire on day of month from which tenancy commenced to run. D.C. Code 1981, §§ 45-1402, 45-2251(b). *Cormier v. McRae*, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

If there were an agreement between landlord and month-to-month tenant whose tenancy commenced on first day of month, that May 1 was acceptable date for expiration of notice to quit, landlord breached agreement by giving notice to vacate on or before April 30; such agreement, if made after giving of such notice, would not give validity to invalid notice. *Custis v. Klein*, 177 A.2d 268, 1962 D.C. App. LEXIS 243 (Cr.App. 1962).

The validity of a notice to quit a month to month tenancy does not depend upon whether the notice expires on a rent day, but upon whether it expires on the day of the month from which the tenancy began to run, thus notice given to expire on the corresponding current date to that of the leasehold origin was valid even though the parties had orally agreed to a change in the date of rental payments. *Ourisman Chevrolet, Inc. v. Zimmerman*, 91 A.2d 709, 1952 D.C. App. LEXIS 215 (Cr.App. 1952).

Notice of termination of tenancy from month to month cannot be made to expire at time other than end of month, notwithstanding Code provision allowing parties to lease to substitute a longer or shorter period of notice than the thirty days which would be otherwise required by Code. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Notices to quit demanding that occupants of houses in federal low rent housing project under month to month tenancies, commencing on first day of each month, vacate houses on or before first day of certain month over thirty days after giving of notices, were valid as against contention that they should not have expired until 10th of month because of provisions in rental agreements for payment of rent in advance before 1 P.M. each day between 1st and 10th of each month. D.C. Code 1940, § 45-902. *Miller v. U.S.*, 77 A.2d 171, 1950 D.C. App. LEXIS 195 (Cr.App. 1950).

The purpose of a thirty day notice to quit is to terminate a tenancy and at expiration of notice to quit tenancy no longer exists but only occupancy. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

With respect to 30-day notice of termination of month to month tenancy, that midnight lying midway between the last day of the terminal month and the first day of the new month must be the termination of the thirtieth day of notice. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. D.C. Code 1940, §§ 11-739, 45-902, 45-904. *Knowles v. Mosher*, 45 A.2d 755, 1946 D.C. App. LEXIS 104 (Cr.App. 1946).

In fixing time when landlord's notice to tenant to quit leased premises expires, law does not take cognizance of fractions of a day or minute. D.C. Code 1940, § 45-902. *Young v. Baugh*, 35 A.2d 242, 1944 D.C. App. LEXIS 151 (Cr.App. 1944).

A landlord is not required to specify, in notice to quit premises leased from month to month date of expiration of notice, but must give notice running for full 30-day period, excluding date of service, and expiring on day of month from which tenancy commenced to run. D.C. Code 1940, § 45-902. *Young v. Baugh*, 35 A.2d 242, 1944 D.C. App. LEXIS 151 (Cr.App. 1944).

In general.

The District of Columbia Emergency Rent Act, which contains no express reference to United States as a landlord or to application of act to government owned housing of any kind, is not applicable to government owned defense housing in the District, such as the Bellevue Houses, and hence government can bring dispossession proceeding against tenant without establishing any of the additional facts which the act requires landlord to establish as condition of recovery of possession of housing accommodations to which the act applies. D.C. Code 1940, §§ 5-103 et seq., 11-735, 11-773, 45-902, 45-1601 to 45-1611; *Lanham Act*, § 1 et seq. as amended 42 U.S.C. § 1521 et seq.; *Housing Act of 1937*, § 1 et seq., 42 U.S.C. § 1401 et seq.; *Second Supplemental National Defense Appropriation Act of 1941*, § 201, 54 Stat. 883, 884; *Emergency Price Control Act of 1942*, §§ 2, 302 as amended 50 U.S.C. Appendix, §§ 902, 942; *Housing and Rent Act of 1947*, § 1 et seq., 50 U.S.C. Appendix, § 1881 et seq. *U.S. v. Wittek*, 69 S.Ct. 1108, 1949 U.S. LEXIS 2937 (U.S. Dist. Col. 1949).

Where party occupying landowner's premises had no right to possession but his original entry had been lawful, ejectment rather than action under forcible entry and detainer statute was only appropriate remedy. D.C. Code 1940, §§ 11-735, 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Late payments of rent, at least when continuous and willful, are violations of an obligation of tenancy which may be the subject of eviction upon the giving of the required 30-day statutory notice, pursuant to rent control law, just as much as violations based upon occupancy limits, banned use of the premises, or other non-rent-related violations. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

Where housing authority in its lease for an apartment in a low-rent housing project constructed under United States Housing Act inserted a provision that it might terminate the lease for any one of eight listed reasons or for

others not named, and notice to quit stated reason that tenants in effect had violated Gwinn Amendment when they failed to execute certificate of nonmembership in subversive organization, tenants, in resisting suit by United States for possession, were entitled to show that Gwinn Amendment was unconstitutional. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

Where housing authority in its lease for an apartment in a low-rent housing project constructed under United States Housing Act inserted a provision that it might terminate the lease for any one of eight listed reasons, or for others not named, such provision indicated a contractual intent that the tenants were not to be evicted except for certain reasons. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

Ordinarily, the United States like any private landlord, may exercise its right to terminate a monthly tenancy by serving a statutory notice to quit, without revealing any other reason. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

At common law a tenant who holds over after end of month and after rightful notice of termination of tenancy is subject to an exercise of an option by landlord to treat him as a wrongdoer or hold him for another month's rent. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Length of notice.

Under Code, § 1219 (D.C. Code 1929, T. 25, § 312), providing that a monthly tenancy may be terminated on 30 days' notice, the landlord is not required to so specify in the notice the date of the termination of the lease, but, having done so, he is bound by that date and must give the full 30 days' notice before that date. *Merritt v. Thompson*, 289 F. 631, 1923 U.S. App. LEXIS 2022 (1923).

Where the landlord was given 30 days' notice to quit on the 1st day of the following month, the notice was sufficient under Code, § 1219 (D.C. Code 1929, T. 25, § 312), whether the tenancy was from month to month, beginning on the 1st of the month, or by sufferance. *McCoy v. Duehay*, 279 F. 1001, 1922 U.S. App. LEXIS 1656 (1922).

A notice to tenant from month to month to quit is not bad, because giving him a day more than the 30 days required by the Code in which

to surrender. *Boss v. Hagan*, 261 F. 254, 1919 U.S. App. LEXIS 1758 (1919).

Month-to-month tenant was entitled to 30-day notice to quit before his landlord could sue for possession of premises. D.C. Code 1981, § 45-1402. *Jamison v. S & H Associates*, 487 A.2d 619, 1985 D.C. App. LEXIS 293 (1985).

Notice to month-to-month tenant whose tenancy commenced on first day of month, to vacate premises on April 30, was invalid in that tenant was entitled to possession for full month of April and could not be required to vacate within such month. *Custis v. Klein*, 177 A.2d 268, 1962 D.C. App. LEXIS 243 (Cr.App. 1962).

Under statute permitting a tenancy from month to month to be terminated by 30 days notice in writing, a notice on May 24, 1949 to quit premises at the end of 60 days after beginning of next month's tenancy, was good and inured to benefit of lessor's widow. D.C. Code 1940, § 45-902. *Alpert v. Wolf*, 73 A.2d 525, 1950 D.C. App. LEXIS 143 (Cr.App. 1950).

The thirty days' notice required to terminate a tenancy from month to month may not include the day on which tenant is required to vacate. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

The notice of termination of month to month tenancy must be given before end of one month, at which time expectancy to have continuation for one or more similar periods will have vested. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Tenant may be given more than 30 days' notice of termination of month to month tenancy without affecting validity of notice. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

The requirements for a good notice to terminate a tenancy by month to month are: Thirty full days' notice; counted by excluding the day of service and including the last day; and expiration of notice on day from which tenancy began to run. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

A tenant from month to month is entitled to full 30 days' notice to quit. D.C. Code 1940, § 45-902. *Klein v. Miles*, 35 A.2d 243, 1944 D.C. App. LEXIS 152 (Cr.App. 1944).

Where monthly tenancy commenced on December 15, 1942, landlord's notice, dated June 11, 1943, and served on tenant on June 12, directing him to vacate and quit leased premises 30 days after June 15, 1943, and adding that notice expired July 15, 1943, was not defective as commencing after June 15, less than 30 days before July 15. D.C. Code 1940, § 45-902. *Klein v. Miles*, 35 A.2d 243, 1944 D.C. App. LEXIS 152 (Cr.App. 1944).

Manner of service of notice.

Substituted service of notice to quit is less

favored than delivery of the document to the tenant in person, and posting should be employed as a last resort. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

When landlord has to fall back on substituted service as method of service of notice to quit, he must strictly comply with the statutory requirements. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

Service of notice to quit by resident manager who knocked on tenants' door but received no response and who slipped notice, enclosed in an envelope, under the door, did not constitute "posting in a conspicuous place" as required by statute and service of notice was defective. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. D.C. Code 1961, §§ 11-736, 45-906. *Custis v. Klein*, 177 A.2d 268, 1962 D.C. App. LEXIS 243 (Cr.App. 1962).

Landlord who without knowledge of dealings between tenant and corporation accepted corporate checks for rent was not thereby bound by transactions between tenant and corporation, and where there was no written assignment of rental agreement with tenant to corporation and landlord had never accepted corporation as a tenant, service of notice on tenant was sufficient to terminate lease as well as sublease expressly made subject thereto. *Haje's, Inc. v. Wire*, 56 A.2d 158, 1947 D.C. App. LEXIS 194 (Cr.App. 1947).

Where one of the landlords personally handed month to month tenant a 30-day notice to quit, there was good service notwithstanding that tenant, after reading notice, stated she would not accept it and handed it back. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Where one of the landlords went to rented dwelling and inquired for month to month tenant, and, upon being told that she was not at home, delivered 30-day notice to quit to an adult person who came to the door, there was good service of such notice. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Where by terms of lease there was a tenancy from month to month commencing on the first of the month, notice tacked on door of premises on November 30, 1945, terminating lease on January 1, 1946, was sufficient as a 30-day notice whether tenant received notice before midnight on November 30th or in the early hours of December 1, 1945. D.C. Code 1940,

§ 45-906. *Lynch v. Bernstein*, 48 A.2d 467, 1946 D.C. App. LEXIS 153 (Cr.App. 1946).

Month to month tenancy defined.

A "tenancy from month to month" is a tenancy for a month certain plus an expectancy or possibility of continuation for one or more similar periods, and until rightful notice of termination is given this expectancy ripens at the turn of each month to a true tenancy for the ensuing month. D.C. Code 1940, §§ 45-821, 45-902. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Notice to quit by tenant.

Tenant's oral notification that she intended to quit premises did not entitle landlord to possession of premises, as notice of intention to quit must be given in writing to be effective. D.C. Code 1981, §§ 45-1402 to 45-1404. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and was estopped to rely on statute relating to termination of tenancy and was not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with statutory requirement. D.C. Code §§ 17-305, 45-902, 45-908. *Sklar v. Hightower*, 342 A.2d 57, 1975 D.C. App. LEXIS 426 (1975).

Month-to-month tenant who fails to give 30 days' written notice may be liable for additional month's rent if lack of proper notice causes loss to landlord but landlord's right may be waived and waiver need not be in writing. D.C. Code § 45-902. *Sklar v. Hightower*, 342 A.2d 57, 1975 D.C. App. LEXIS 426 (1975).

In case of a tenancy from month to month, landlord is entitled to a written 30-day notice to quit from the tenant, and if the tenant quits without giving such notice he is liable for an additional month's rent, but landlord may waive his right to such notice, and a surrender by tenant and an unqualified acceptance by landlord terminates tenancy and relieves tenant from further liability for rent. *Thomas D. Walsh, Inc. v. Moore*, 141 A.2d 754, 1958 D.C. App. LEXIS 237 (Cr.App. 1958).

In action by landlord against tenant, who took possession as a tenant by the month, to recover a month's rent from tenant, who vacated without giving statutory 30-day notice of his intention to quit, evidence sustained finding that landlord, whose employee took key to premises from tenant without protest and on following day placed rental sign on premises, waived his right to notice. D.C. Code 1951, § 45-902. *Thomas D. Walsh, Inc. v. Moore*, 141 A.2d 754, 1958 D.C. App. LEXIS 237 (Cr.App. 1958).

Where dwelling house was leased on a monthly basis and after paying the first month's rent in advance, the tenants vacated after ten days without notice, the landlord was not entitled to recover an additional month's rent where due to rerenting, it sustained no loss. D.C. Code 1951, § 45-902. *First Nat. Realty Corp. v. Oliver*, 134 A.2d 325, 1957 D.C. App. LEXIS 262 (Cr.App. 1957).

The purpose of the code section respecting tenants' notice of intent to vacate rented premises is not to penalize the tenant but to give the opportunity to the landlord to find a new tenant, and where the failure to give notice results in no loss to the landlord, due to reletting, an additional month's rent would penalize the tenant and unjustly enrich the landlord contrary to the intent of the statute. D.C. Code 1951, § 45-902. *First Nat. Realty Corp. v. Oliver*, 134 A.2d 325, 1957 D.C. App. LEXIS 262 (Cr.App. 1957).

Payment or acceptance of rent after notice.

The rule, that when landlord gives notice to quit and later accepts rent for new term or part thereof he waives his right to demand possession under notice, applies only in cases where notice to quit is statutory prerequisite of landlord's right to recover possession from his tenant, that is, in cases involving tenancies from month to month, at will, or by sufferance. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

A landlord, who had given notice to his tenant to quit on the 1st day of the following month, does not waive the notice by accepting payment of the rent to the last day of the current month. *McCoy v. Duehay*, 279 F. 1001, 1922 U.S. App. LEXIS 1656 (1922).

The receipt by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice; but receipt of rent for the current month pending a notice to quit does not have that effect. *Byrne v. Morrison*, 25 App.D.C. 72, 1905 U.S. App. LEXIS 5245 (1905).

Generally, receipt by landlord, after notice to quit has expired, of rent for new term or part thereof, amounts to a waiver of his right to demand possession under that notice. *Rhodes v. United States*, 310 A.2d 250, 1973 D.C. App. LEXIS 375 (1973).

Finding, in action for possession by landlord, which charged rent on basis of the tenant's ability to pay, that fact that institution, which collected rent for landlord, accepted and deposited rent payment, which was made by tenant for new period after expiration of 30-day notice to quit, did not indicate an intention by landlord to waive such notice was not clearly erroneous. *Rhodes v. United States*, 310 A.2d 250, 1973 D.C. App. LEXIS 375 (1973).

Notice to quit was waived by landlord's subsequent continuous acceptance of rent from statutory tenant. D.C. Code 1951, § 45-1601 et seq. *Dunnington v. Thomas E. Jarrell Co.*, 96 A.2d 274, 1953 D.C. App. LEXIS 128 (Cr.App. 1953).

In landlord's action to recover leased premises, where trial court fixed amount of tenant's appeal bond at certain sum provided that tenant paid all rent in arrears, and continued to pay rent as due until final determination of appeal, acceptance of rent thereafter by landlord waived no rights that he had, and tenant was estopped from raising defense that landlord accepted rent after trial, that such constituted waiver of notice to quit. D.C. Code 1940, § 45-902. *Conrad v. Pisner*, 79 A.2d 780, 1951 D.C. App. LEXIS 147 (Cr.App. 1951).

Acceptance by landlord of rent during running of notice to quit does not constitute a waiver of notice. D.C. Code 1940, § 45-1605(b)(2). *Little v. French*, 71 A.2d 534, 1950 D.C. App. LEXIS 107 (Cr.App. 1950).

An "acceptance" by a landlord of rent from a tenant sufficient to constitute a waiver of a notice to quit comprehends receipt of something, plus an intention to retain it. *Little v. French*, 71 A.2d 534, 1950 D.C. App. LEXIS 107 (Cr.App. 1950).

The acceptance of rent by landlord from month to month tenant only for period during the running of notice to quit was not a waiver of such notice. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

In action by landlord against one alleged to be a monthly tenant for possession of realty, appellate court could not pass on validity of defense of acceptance of a month's rent after service of notice to quit in absence of statement of proceedings and evidence showing when ten-

ancy began to run or when notice to quit expired, since acceptance of rent to date of such expiration would not waive or invalidate notice. D.C. Code 1940, § 45-902. *Moncure v. Curry*, 42 A.2d 143, 1945 D.C. App. LEXIS 92 (Cr.App. 1945).

A notice to quit served on November 27, 1944, on a monthly tenant whose tenancy ran from the first day of the month would expire January 1, 1945, and acceptance of rent to January 1, 1945 after service of notice would not waive or invalidate such notice. D.C. Code 1940, § 45-902. *Moncure v. Curry*, 42 A.2d 143, 1945 D.C. App. LEXIS 92 (Cr.App. 1945).

Whether landlord's agent had authority to accept rent paid after service of notice to quit would be immaterial unless payment was for rent beyond termination date of the notice. D.C. Code 1940, § 45-902. *Moncure v. Curry*, 42 A.2d 143, 1945 D.C. App. LEXIS 92 (Cr.App. 1945).

When a cure is effectuated within 30 days, the plain language of the statute precludes recovery of possession for the violation of the tenancy cited in the notice and ends the effectiveness of the notice. *McGinty v. Dickson*, 117 WLR 1109 (Super. Ct. 1989).

Persons entitled to notice.

General partner had no obligation to serve notice to quit on limited partner before raising rent for limited partner's use of parking lots owned by partnership, provided that increase was consistent with provision of partnership agreement authorizing rental to limited partner at reasonable monthly rate; parties were sophisticated businessmen who entered agreement with relatively equal bargaining power so there was no need to rewrite contract to equalize equities. *Auger v. Tasea Inv. Co.*, 676 A.2d 18, 1996 D.C. App. LEXIS 86 (1996).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services did not occupy "rental unit" within meaning of Rental Housing Act of 1985, and thus were not "tenants" within meaning of Act; therefore, employer was not obligated to give them 30 days' notice to quit. D.C. Code 1981, §§ 45-2503(33, 36), 45-2551. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services were servants rather than tenants, and were thus not entitled to 30-day notice required under statute pertaining to tenancies by sufferance; maintenance men did not have lease, and were allowed to occupy apartment only as incident to services they provided. D.C. Code 1981, § 45-1404. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

Where Congress amended the District of Columbia Emergency Rent Act providing that for

housing accommodations rented on January 1, 1941, maximum rent ceiling should be increased to 20 per cent above freeze date rental, on filing by landlord with Rent Administrator of a new rent schedule form, tenants were obligated to pay such authorized increase on filing by landlord of his schedule, and tenants were not entitled to 30-day notice. D.C. Code 1940, §§ 45-902, 45-1601 et seq., 45-1605; Act Cong. June 30, 1951, §§ 1 et seq., 2(4), 65 Stat. 98. *Stoner v. Humphries*, 87 A.2d 528, 1952 D.C. App. LEXIS 149 (Cr.App. 1952).

A roomer, although a tenant under the rent act, was not a tenant for other purposes, and was not entitled to benefit of statutory provisions requiring a notice to quit for termination of a tenancy. D.C. Code 1940, §§ 45-902 to 45-904, 45-1611(a, f). *Tamamian v. Gabbard*, 55 A.2d 513, 1947 D.C. App. LEXIS 184 (Cr.App. 1947).

Pleadings.

In a landlord and tenant proceeding, defects in the form of the complaint, and notice to quit, and the fact that the reversion of the lease sued on is outstanding in a third person, are not jurisdictional, but may be waived by the failure of the defendant to make objection by proper pleading, and cannot be advanced for the first time on appeal. *Bliss v. Duncan*, 44 App.D.C. 93, 1915 U.S. App. LEXIS 2683 (1915).

Where a bill of exceptions recites that a tenancy expired on November 25th, such recital will be taken as true, although it is suggested by counsel in argument that the tenancy actually expired on November 24th, as shown by the lease, which had been misrecited in the bill of exceptions. *Byrne v. Morrison*, 25 App.D.C. 72, 1905 U.S. App. LEXIS 5245 (1905).

Where complaint alleged termination of tenancy by notice and sought recovery of demised premises, even if premises were housing accommodations governed by rent act, it was still possible that plaintiff could have stated a cause of action by alleging that tenants had violated a condition of their tenancy, and proper procedure was to grant motion to dismiss with leave to amend. D.C. Code 1940, §§ 45-902, 45-1605(b). *U.S. v. Wittek*, 48 A.2d 805, 1946 D.C. App. LEXIS 164 (Cr.App. 1946).

In action for recovery of demised premises, where complaint alleged that tenancy had been terminated pursuant to notice to quit but did not show whether premises were commercial or housing accommodations and, hence was sufficient to state a cause of action if commercial premises not subject to rent act were involved, the sustaining of motion to dismiss was error. D.C. Code 1940, §§ 45-902, 45-1605(b). *U.S. v. Wittek*, 48 A.2d 805, 1946 D.C. App. LEXIS 164 (Cr.App. 1946).

In proceeding in landlord and tenant court, where informality of pleading has always been

the rule, to recover demised premises on the sole ground that tenancy had been terminated by notice failure of complaint to show that premises were exempt from local rent act did not require dismissal. D.C. Code 1940, §§ 45-902, 45-1605(b). *U.S. v. Wittek*, 48 A.2d 805, 1946 D.C. App. LEXIS 164 (Cr.App. 1946).

Protective orders.

Court may, in its discretion, strike tenant's pleadings and enter judgment of possession in favor of landlord when tenant fails to comply with protective order, but only after holding proper inquiry, considering extent of tenant's noncompliance with order, reasons for that noncompliance, and landlord's right to be free from governmental takings without just compensation. *U.S. Const.Amend. 5. Haynes v. Logan*, 600 A.2d 1074, 1991 D.C. App. LEXIS 342 (1991).

Trial court could not enter judgment of possession for landlord based on tenant's noncompliance with protective order, where court failed to hold hearing on landlord's request for judgment of possession, even if court considered testimony presented at prior Bell hearing and hearing on tenant's request to make late protective order payment as well as averments in tenant's motion for reconsideration of denial of that request. *Haynes v. Logan*, 600 A.2d 1074, 1991 D.C. App. LEXIS 342 (1991).

Accumulation of hearings on other matters before different trial judges may not substitute for hearing on landlord's request for judgment of possession for tenant's noncompliance with protective order. *Haynes v. Logan*, 600 A.2d 1074, 1991 D.C. App. LEXIS 342 (1991).

That landlord failed to prove that tenant had waived right to notice to quit did not preclude landlord from obtaining judgment of possession for tenant's noncompliance with protective order, where tenant had ample opportunity to contest landlord's allegation of waiver but failed to do so. *Haynes v. Logan*, 600 A.2d 1074, 1991 D.C. App. LEXIS 342 (1991).

Retaliatory evictions.

Tenant's constitutional rights to freedom of speech and to petition for redress of grievances were not violated by landlord's eviction of tenant through court action, notwithstanding fact that landlord may have been motivated to evict in retaliation for tenant's justified complaints to housing authority about condition of premises. D.C. Code 1961, § 45-902. *Edwards v. Habib*, 227 A.2d 388, 1967 D.C. App. LEXIS 135 (App. 1967), reversed by 397 F.2d 687, 130 U.S. App. D.C. 126, 1968 U.S. App. LEXIS 6913 (1968).

Thirty days' notice to quit given by landlord to month-to-month tenant was sufficient to terminate tenancy under statute, notwithstanding fact that landlord may have been

motivated to give notice in retaliation for tenant's justified complaints to housing authority about condition of premises. D.C. Code 1961, § 45-902. *Edwards v. Habib*, 227 A.2d 388, 1967 D.C. App. LEXIS 135 (App. 1967), reversed by 397 F.2d 687, 130 U.S. App. D.C. 126, 1968 U.S. App. LEXIS 6913 (1968).

Review.

Where a tenant appeals to the Supreme Court of the District of Columbia from the judgment of a justice of the peace in favor of his landlord for possession, the judgment on the appeal against the tenant and his surety under Code, § 1233 (31 Stat. 1383, c. 854), will not be arrested because the verdict on the trial of the appeal, instead of being for intervening damages and compensation for the use and occupation of the property, is for a specified sum of money, "intervening rent, and damages," where there is nothing to show that the form of the verdict was called to the attention of the court. *Byrne v. Morrison*, 25 App.D.C. 72, 1905 U.S. App. LEXIS 5245 (1905).

Where rejection by trial court of an offer by tenants to prove that they had an oral agreement with deceased landlord to give them a lease through January 31, 1950, was assigned by tenants as error, but briefs on appeal were not filed until subsequent to the terminal date specified, the issue was moot, and court would not consider admissibility of the proffered evidence, or constitutionality of amendment to the Survivor's Testimony statute, under the due process clause. D.C. Code 1940, §§ 14-302, 45-901, 45-902; *U.S. Const.Amend. 5. Alpert v. Wolf*, 73 A.2d 525, 1950 D.C. App. LEXIS 143 (Cr.App. 1950).

Sufficiency of notice.

A notice to a tenant to quit, which describes the demised property in the same way that it is described in the lease, and which gives the tenant more than 30 days' notice to surrender the premises, is a sufficient notice. *Bliss v. Duncan*, 44 App.D.C. 93, 1915 U.S. App. LEXIS 2683 (1915).

A 30-day notice to quit is not void because it fails to specify the day of the termination of the tenancy where it is dated and served the full 30 days before the end of the term. *Byrne v. Morrison*, 25 App.D.C. 72, 1905 U.S. App. LEXIS 5245 (1905).

Housing landlord subject to statute governing evictions may not terminate month-to-month tenancy under notice to quit statute without giving valid statutory reason. D.C. Code 1981, §§ 45-1402, 45-2551, 45-2551(b). *Cormier v. McRae*, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

Where tenancy by terms of written lease commenced on first day of each month, notice served on June 26, which ordered tenant to quit

premises at expiration of 30 days after beginning of her next month's tenancy, complied with statute requiring landlord to give 30 days notice to quit in writing which must expire on day of month from which tenancy begins to run. D.C. Code 1940, § 45-902. *Conrad v. Pisner*, 79 A.2d 780, 1951 D.C. App. LEXIS 147 (Cr.App. 1951).

Thirty days' notice to tenant in defense housing project, written on a letterhead of the National Capital Housing Authority and signed by property manager of project, was sufficient though dispossessory proceedings were brought by the United States, rather than by the authority. *Witteck v. U.S.*, 54 A.2d 747, 1947 D.C. App. LEXIS 163 (Cr.App. 1947).

Where month to month tenancy began on the third of the month, and rent was payable on that day, a notice to quit signed by both landlords, dated and served on October 18, 1946 requiring tenants to vacate premises on the third day of December, 1946, satisfied statutory provision respecting notice to terminate tenancy from month to month. D.C. Code 1940, § 45-902. *Wynn v. Washington*, 53 A.2d 275, 1947 D.C. App. LEXIS 142 (Cr.App. 1947).

A notice to quit served on tenant on or about May 14, 1946, requiring month to month tenant to vacate "on or before" July 1, 1946 was not defective because of use of words "on or before", since notice did not require tenant to quit before July 1. D.C. Code 1940, § 45-902. *Gordon v. Tino*, 50 A.2d 593, 1946 D.C. App. LEXIS 189 (Cr.App. 1946).

A landlord's notice to quit, dated and served on month to month tenant June 30, 1943, and demanding that tenant quit leased premises at end of 30 days after beginning of next month's tenancy on July 1, 1943, complied with statute requiring 30 days' written notice to quit, expiring on day of month from which tenancy commenced to run, so as to entitle landlord to possession after August 1, on which date notice expired. D.C. Code 1940, § 45-902. *Young v. Baugh*, 35 A.2d 242, 1944 D.C. App. LEXIS 151 (Cr.App. 1944).

Notice to quit must be given in each successive suit for possession based upon the nonpayment of rent for different periods of time unless landlord establishes a continuing waiver of notice. *Nash v. Walker*, 112 WLR 1617 (Super. Ct. 1984).

Surrender of premises.

Whether there has been a surrender of premises by a tenant under a tenancy from month to month and an unqualified acceptance by landlord such as to terminate tenancy and relieve tenant from further liability for rent is generally a question of fact, and mere acceptance of key and re-entry for purpose of re-renting does not conclusively establish, as a matter of law, that tenant is relieved from further rent. D.C.

Code 1951, § 45-902. *Thomas D. Walsh, Inc. v. Moore*, 141 A.2d 754, 1958 D.C. App. LEXIS 237 (Cr.App. 1958).

Tenancy at sufferance.

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. D.C. Code 1951, §§ 45-820, 45-902, 45-904. *Cavalier Apartments Corp. v. McMullen*, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. D.C. Code 1951, §§ 45-820, 45-902, 45-904. *Cavalier Apartments Corp. v. McMullen*, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

Validity of lease.

Fact that there had been Housing Code violations, under process of being corrected, in tenant's apartment at time she executed lease did not render lease invalid. D.C. Code §§ 45-902, 45-908, 47-2328. *Watson v. Kotler*, 264 A.2d 141, 1970 D.C. App. LEXIS 262 (App. 1970).

Where substantial violation of housing regulations existed on premises at time lease was signed, such violations were sufficient to render premises unsafe and unsanitary, and landlord knew of such violations, lease was void and unenforceable, though landlord had not received official notice of existence of violations from city housing inspectors. D.C. Code §§ 45-902, 45-908. *Diamond Housing Corp. v. Robinson*, 257 A.2d 492, 1969 D.C. App. LEXIS 327 (App. 1969).

Provision of lease that tenant, if not in default, was entitled to not less than 30 days' notice to vacate, which notice was to be given, in writing, at least 30 days before the tenancy was intended to be terminated, was a valid contract substitution for the code provision pertaining to notice to terminate a tenancy from month to month. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Waiver of right to notice.

If landlord fails to serve tenant with notice to quit and tenant does not waive such notice, landlord is not entitled to possession. D.C. Code 1981, § 45-1402. *Jamison v. S & H Associates*, 487 A.2d 619, 1985 D.C. App. LEXIS 293 (1985).

If landlord alleges in complaint for possession that tenant has waived the right to a notice to quit, and the tenant contests that allegation, landlord must affirmatively prove either that there has been waiver or that notice has been served. D.C. Code 1981, § 45-1402. *Jamison v. S & H Associates*, 487 A.2d 619, 1985 D.C. App. LEXIS 293 (1985).

On issue as to whether statutory tenant had, under lease provision, waived right to 30 days' notice by using premises for unlawful purpose, evidence would not sustain finding in favor of landlord. D.C. Code 1951, § 45-1601 et seq. *Dunnington v. Thomas E. Jarrell Co.*, 96 A.2d 274, 1953 D.C. App. LEXIS 128 (Cr.App. 1953).

§ 42-3203. Notice of termination — Tenancies at will.

A tenancy at will may be terminated by 30 days notice in writing by either landlord or tenant.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1220.)

Cross references. — Alterations to units after notice to vacate, prohibition, see § 6-731.01 et seq.

Prior Codifications. — 1981 Ed., § 45-1403.

1973 Ed., § 45-903.

CASE NOTES

ANALYSIS

Accepting rent after notice.
In general.
Persons entitled to notice.
Written notice.

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The rule, that when landlord gives notice to quit and later accepts rent for new term or part thereof he waives his right to demand possession under notice, applies only in cases where notice to quit is statutory prerequisite of landlord's right to recover possession from his tenant, that is, in cases involving tenancies from month to month, at will, or by sufferance. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. D.C. Code 1940, §§ 45-902 to 45-904.

Shapiro v. Christopher, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

In general.

Tenants holding over after foreclosure of property which was treated before and subsequent to foreclosure as rental property were entitled to eviction protections of Rental Housing Act of 1980 [D.C. Code 1981, § 45-1561 et seq.]. *Merriweather v. D.C. Bldg. Corp.*, 494 A.2d 1276, 1985 D.C. App. LEXIS 411 (1985).

Statutory eviction restrictions applied to mortgagee's attempt to evict tenant who continued to live in her home after landlord defaulted on mortgage and mortgagee repurchased home at foreclosure sale, and restrictions superseded earlier enacted statutes which provided that tenant continuing in possession following foreclosure sale was tenant at will whose tenancy could be terminated by giving 30 days' of written notice. D.C. Code 1981, §§ 45-222, 45-1403, 45-1561, 45-1561(a). *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

A tenancy at will does not operate to impose contractual obligations, i.e., for the payment of rent, upon parties. D.C. Code 1981, § 45-222. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

Where purchasers of house at foreclosure sale notified mortgagor-owner to quit immediately after their purchase in May, where they did not sue for possession until after settlement took place in July, where the court treated their suit as a civil action rather than a summary action for possession and did not render decision until January, and where, during all that time, mortgagor occupied the house with knowledge that her right to possession was in

issue, there was compliance with statute's purpose of giving a former owner of real estate when sold out under a mortgage reasonable notice and time to peaceably remove himself and his belongings from the property sold before being made a defendant in a summary proceeding in court. D.C. Code §§ 45-822, 45-903, 45-910. *Rinaldi v. Wallace*, 293 A.2d 847, 1972 D.C. App. LEXIS 410 (1972).

The eviction of tenant at will without statutory 30-day notice was unlawful and justified award of damages. D.C. Code 1940, § 45-903. *Northeast Auto Wreckers v. Sanford*, 43 A.2d 292, 1945 D.C. App. LEXIS 107 (Cr.App. 1945).

Persons entitled to notice.

Tenant in possession held entitled to thirty-day notice to quit before purchaser at foreclosure sale of premises institutes summary proceedings for possession (D.C. Code 1929, T. 18, § 225, T. 25, §§ 282, 313, 320). *Thornhill v. Atlantic Life Ins. Co.*, 70 F.2d 846, 1934 U.S. App. LEXIS 4333 (1934).

Residents of shelter for homeless persons operated in federally owned building were not "tenants," entitled to 30 days notice to quit under District of Columbia Code [D.C. Code 1981, §§ 45-1403, 45-1404], because government never sought nor received any rent for use of shelter. D.C. Code 1981, § 45-1503(30). *Robbins v. Reagan*, 616 F. Supp. 1259, 1985 U.S. Dist. LEXIS 16689 (1985), affirmed in part by 780 F.2d 37, 250 U.S. App. D.C. 375, 1985 U.S. App. LEXIS 25053 (1985).

Members of foreign cooperative association, whose membership was terminated for failure to pay monthly carrying charges, were not entitled to 30-day notice to vacate under D.C. Rental Housing Act; members were tenants-at-will after their interest in cooperative was terminated, and as such, were entitled only to notice for tenants-at-will. D.C. Code 1981, §§ 45-1403, 45-2515(a)(6). *Snowden v. Benning Heights Cooperative, Inc.*, 557 A.2d 151, 1989 D.C. App. LEXIS 59 (1989).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services did not occupy "rental unit" within meaning of Rental Housing Act of 1985, and thus were not "tenants" within meaning of Act; therefore, employer was not obligated to give them 30 days' notice to quit. D.C. Code 1981, §§ 45-2503(33, 36), 45-2551. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

Where real property is sold under foreclosure of a deed of trust, grantor of deed of trust, or anyone in possession claiming under him, becomes tenant at will of purchaser at foreclosure and is entitled to 30 days' notice to quit. D.C. Code §§ 45-822, 45-903. *Thompson v. Mazo*, 245 A.2d 122, 1968 D.C. App. LEXIS 189 (App. 1968).

Written notice.

Tenant who initially orally told landlord she intended to quit premises did not waive her right to written notice to vacate before landlord could seek possession; even if tenant can waive right to written notice, such waiver must be in writing, and tenant did not relinquish possession of premises when her plans to quit premises fell through. D.C. Code 1981, § 45-1408. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Tenant's oral notification that she intended to quit premises did not entitle landlord to possession of premises, as notice of intention to quit must be given in writing to be effective. D.C. Code 1981, §§ 45-1402 to 45-1404. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Statute providing that landlord may not recall notice to vacate and that tenant may not recall notice of intention to quit premises, without consent of other party, applies to notice in writing, and does not permit substitution of oral notice for written notice. D.C. Code 1981, § 45-1405. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

§ 42-3204. Notice of termination — Tenancies by sufferance; apportionment of rent.

A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the 30th day after the day of the service of the notice. If such notice expires before any periodic instalment of rent falls due, according to the terms of the tenancy, the landlord shall be entitled to a proportionate part of such instalment to the date fixed for quitting the premises.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1221.)

Cross references. — Alterations to units after notice to vacate, prohibition, see § 6-731.01 et seq.

Prior Codifications. — 1981 Ed., § 45-1404.

1973 Ed., § 45-904.

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Acceptance of rent after notice.

The rule, that when landlord gives notice to quit and later accepts rent for new term or part thereof he waives his right to demand possession under notice, applies only in cases where notice to quit is statutory prerequisite of landlord's right to recover possession from his tenant, that is, in cases involving tenancies from month to month, at will, or by sufferance. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Where a 30-day notice to quit was served on May 1, 1922, held that acceptance of rent for the month of May was not a waiver of the right to possession under the notice. *Weaver v. Koester*, 294 F. 1011, 1924 U.S. App. LEXIS 2972 (1924).

A landlord receiving rent for new term or part thereof after giving tenant notice to quit waives

right to demand possession of leased premises under such notice. Code 1940, § 45-904. *Christopher v. Shapiro*, 76 A.2d 781, 1950 D.C. App. LEXIS 190 (Cr.App. 1950).

In suit by landlord for possession of realty, whether fact that after service of notice to quit premises, tenant mailed to manager of realty a check for next month's rent which was inadvertently deposited but thereafter returned to tenant and never credited to manager's account, constituted acceptance of the rent, and notice to quit became ineffective was for jury. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

Action by owners for possession of residential property under Emergency Rent Act, on ground that they desired possession for their immediate use as a dwelling, was not barred by prior judgment for defendant in action between same parties, where transcript showed that, when prior judgment was introduced in evidence, owners' attorney stated without contradiction that findings for defendant were based on fact that 30-day notice to quit required by law to be served on tenant to terminate tenancy had been invalidated by acceptance of rent by owners' rental agent for a period extending beyond expiration date of notice, and present action was brought after expiration date of the second notice. D.C. Code 1940, §§ 45-904, 45-1605(b)(2). *Klein v. Fields*, 32 A.2d 398, 1943 D.C. App. LEXIS 166 (Cr.App. 1943).

Action for possession.

Clause in commercial lease stating that tenant would have no further liability under lease after its expiration did not insulate tenant from liability to landlord for unpaid rent when it became a tenant at sufferance, as the tenancy at sufferance clause in the lease existed to regulate parties' relationship and obligations after the lease expired, and though the conditions of the tenancy at sufferance were specified in the lease, tenant's liability did not arise under it. *Bannum, Inc. v. 2210 Adams Place, N.E., LLC*, 4 A.3d 431, 2010 D.C. App. LEXIS 509 (2010).

Where landlord obtained judgment for possession of the premises, it thereby terminated the leasehold and any obligation to pay rent. *BDC Capital Props., L.L.C. v. Quan Trinh*, 307 F.Supp.2d 12, 2004 U.S. Dist. LEXIS 3525 (2004).

Where landlord of housing which had been determined to be unsafe and uninhabitable in violation of housing regulations, served a 30

days' notice upon tenant at sufferance and then brought action to recover possession upon her failure to quit so that he could withdraw property from rental market, it was unreasonable to permit tenant to remain in unsafe and uninhabitable housing, and in absence of opposing affidavits by tenant, granting of landlord's motion for summary judgment was proper. D.C. Code General Sessions Court Rules, § 1, rule 56(e, f); D.C. Code § 45-904. *Robinson v. Diamond Housing Corp.*, 267 A.2d 833, 1970 D.C. App. LEXIS 315 (App. 1970), reversed by 463 F.2d 853, 150 U.S. App. D.C. 17, 1972 U.S. App. LEXIS 10344 (1972).

In landlord's suit for possession of leased lots and rent due therefor, where jury's verdict, not attacked, determined issue of possession in plaintiff's favor, plaintiff was entitled to entry of judgment thereon, with consequential result that issues determined thereby would become *res judicata*, so that court erred in dismissing action after verdict, without entering judgment thereon, because of defendant's payment to plaintiff of full amount of rent found due. *Christopher v. Shapiro*, 76 A.2d 781, 1950 D.C. App. LEXIS 190 (Cr.App. 1950).

Where tenant was served with notice to quit on March 1, and on July 26, 1949, realty was leased to third party, lease to be retroactive to May 1, 1949 and to be subject to outstanding tenancy and landlord agreed to assign all right and interest in any outstanding leases and agreements of existing tenants to third party and to assist in obtaining possession from existing tenants when called on to do so, and landlord and tenant suit was filed August 1, 1949, in name of landlord and of third party, landlord had not lost all right to file suit. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

A landlords' suit for possession of business property occupied by tenant by sufferance was not prematurely brought because complaint was sworn to by landlords on 30th day after notice to quit, where suit was not filed until two days later. *Rules, Landlord and Tenant Branch, Municipal Court of Appeals for the District of Columbia*, rule 13; D.C. Code 1940, § 45-904. *Globe Clothing Shop v. Skolnick*, 50 A.2d 271, 1946 D.C. App. LEXIS 187 (Cr.App. 1946).

An action by landlords for possession of business property occupied by defendant as a tenant by sufferance was commenced when the complaint was filed, and not when the complaint was verified. *Rules, Landlord and Tenant Branch, Municipal Court of Appeals for the District of Columbia*, rule 13; D.C. Code 1940, § 45-904. *Globe Clothing Shop v. Skolnick*, 50 A.2d 271, 1946 D.C. App. LEXIS 187 (Cr.App. 1946).

In action by purchaser of leased rooming house for possession thereof for her own resi-

dence purposes after expiration of one-year lease under which tenant was holding over as tenant by sufferance, testimony concerning price paid for rooming house business by tenant and amount thereof she had recouped was properly excluded as having no bearing on question of plaintiff's good faith, legality of notice of termination of tenancy, or any other question. D.C. Code 1940, §§ 45-904, 45-1605(b)(2). *Arsenault v. Angle*, 43 A.2d 709, 1945 D.C. App. LEXIS 112 (Cr.App. 1945).

Where one-year lease unambiguously gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90 days' notice, refusal to admit testimony to explain terms of lease, in action by purchaser of premises for possession thereof, to show that lessee was entitled to 90 days' notice to vacate where he held over after expiration of one year's tenancy and continued to pay rent, was not error. D.C. Code 1940, §§ 45-904, 45-1605(b) (2). *Arsenault v. Angle*, 43 A.2d 709, 1945 D.C. App. LEXIS 112 (Cr.App. 1945).

Construction and application.

Under Code, § 1034 (D.C. Code 1929, T. 25, § 280) tenants in possession of a property under a lease, which had expired, were tenants by sufferance. *Weaver v. Koester*, 294 F. 1011, 1924 U.S. App. LEXIS 2972 (1924).

Although District of Columbia Rent Control Regulation governing eviction procedures under the District's rent control program is in conflict with District of Columbia Code providing that a tenant whose lease has expired may be evicted without service of a notice to quit and with related Code provision which does not require that a notice to quit contain a reason therefor, the conflicting sections of the Code, being first enacted, yield to the more recently enacted rent control regulations. D.C. Code §§ 45-901, 45-904, 45-1621 et seq. *Jack Spicer Real Estate, Inc. v. Gassaway*, 353 A.2d 288, 1976 D.C. App. LEXIS 485 (1976).

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. D.C. Code 1951, §§ 45-820, 45-902, 45-904. *Cavalier Apartments Corp. v. McMullen*, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

Though Rent Act was enacted primarily for benefit of tenants, it did not intend that rights given tenants should be used to frustrate rights reserved to landlord, and where rights of purchaser of leased property to be used for purchaser's residence were clearly established, tenant must yield regardless of hardships involved. D.C. Code 1940, §§ 45-904, 45-1605(b)(2). *Arsenault v. Angle*, 43 A.2d 709, 1945 D.C. App. LEXIS 112 (Cr.App. 1945).

Where tenant, under verbal hiring by the month removed herself from rented apartment and sublet it to another with landlord's consent for a designated period, after expiration of such period, landlord was entitled to possession of the apartment on ground that tenant was violating "obligation of tenancy" within Emergency Rent Act. D.C. Code 1940, §§ 45-820, 45-904, 45-1605(b). *Keroes v. Westchester Apartments*, 36 A.2d 263, 1944 D.C. App. LEXIS 160 (Cr.App. 1944).

Expiration of notice.

The purpose of a thirty day notice to quit is to terminate a tenancy and at expiration of notice to quit tenancy no longer exists but only occupancy. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. D.C. Code 1940, §§ 11-739, 45-902, 45-904. *Knowles v. Mosher*, 45 A.2d 755, 1946 D.C. App. LEXIS 104 (Cr.App. 1946).

Holding over.

Where lease expired on August 15, tenants became tenants by sufferance during second half of August and, therefore, were entitled to a 30-day notice to quit. D.C. Code §§ 45-820, 45-904. *Brown v. Young*, 364 A.2d 1171, 1976 D.C. App. LEXIS 395 (1976).

Lessee who occupied commercial property as hold-over tenant after his three years' written lease had expired was a hold-over tenant by sufferance and his tenancy was subject to termination on thirty days' notice. D.C. Code 1951, §§ 45-820, 45-904. *Lake v. Angelo*, 163 A.2d 611, 1960 D.C. App. LEXIS 243 (Cr.App. 1960).

A tenant continuing in possession and paying rent under an expired lease becomes a tenant at sufferance and such tenancy is impliedly subject to provisions of expired lease. *Friedman v. Sherman*, 74 A.2d 57, 1950 D.C. App. LEXIS 149 (Cr.App. 1950).

Where one-year lease of rooming house gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90-days notice, it unambiguously provided for 90-days notice only during year lease was in effect, and tenant by holding over and paying rent after lease expired became "tenant by sufferance" and was entitled only to the usual 30-day notice. D.C. Code 1940, § 45-904. *Arsenault v. Angle*, 43 A.2d 709, 1945 D.C. App. LEXIS 112 (Cr.App. 1945).

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. D.C. Code 1940, §§ 45-820, 45-904. *Hampton v. Mott Motors*, 32 A.2d 247, 1943 D.C. App. LEXIS 158 (Cr.App. 1943).

A tenant holding over and paying rent becomes a "tenant by sufferance" in sense only that his tenancy may be terminated by tenant or landlord on 30 days' notice in accordance with statute. D.C. Code 1940, §§ 45-820, 45-904. *Hampton v. Mott Motors*, 32 A.2d 247, 1943 D.C. App. LEXIS 158 (Cr.App. 1943).

Where tenant held over for about 30 months after expiration of written lease, and tenancy could have been terminated on 30 days' notice tenancy created by holding over was impliedly subject to covenant of lease imposing upon tenant liability for cost of needful repairs. D.C. Code 1940, §§ 45-820, 45-904. *Hampton v. Mott Motors*, 32 A.2d 247, 1943 D.C. App. LEXIS 158 (Cr.App. 1943).

In general.

A tenant's voluntary relinquishment of possession ends case or controversy when landlord makes no claim for back rent. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but, in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

In landowner's action to recover possession and fair amount as rental from person in possession of property without right, it was error to permanently stay judgment for possession upon payment by defendant of amount adjudged to be due as rental. D.C. Code 1940, §§ 45-902 to 45-904. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Thirty days' written notice to quit must be served on tenant to terminate tenancy by sufferance (Code, § 1221 [D.C. Code 1929, T. 25, § 314]). *Beyer v. Smith*, 32 F.2d 423, 1929 U.S. App. LEXIS 3785 (1929).

A "tenancy at sufferance" requires "payment of rent" or "hirings" or a "rate per month" to accompany the estate. D.C. Code § 45-820. *Smith v. Town Center Management Corp.*, 329 A.2d 779, 1974 D.C. App. LEXIS 327 (1974).

Although former tenant was entitled to restitution of rent paid under void lease, landlords were entitled to the reasonable value of the premises in the condition existing when occupied by the tenant and were entitled to setoff. D.C. Code § 45-904. *William J. Davis, Inc. v. Slade*, 271 A.2d 412, 1970 D.C. App. LEXIS 360 (App. 1970).

The mere change in description or premises, particularly where rights of tenant in possession on January 1, 1941, the effective date of Rent Control Act, are concerned and where the same use is continued, cannot operate to change the status of housing accommodations. D.C. Code 1940, § 45-1601 et seq. *Friedman v. Sherman*, 74 A.2d 57, 1950 D.C. App. LEXIS 149 (Cr.App. 1950).

Prior to enactment of District of Columbia Emergency Rent Act, landlord could have evicted tenant by sufferance at any time and without any reason merely by serving on tenant a 30-day notice to quit followed with possessory action, but Rent Act restricts landlord's rights and protects tenant from eviction except on one of grounds specified. Code 1940, §§ 45-820, 45-904, 45-1605(b). *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Where tenant at sufferance twice sublet apartment for definite terms with express consent of landlord and landlord after it had knowledge that persons in addition to second sublessee were occupying apartment expressly consented that second sublease continue to its expiration date, and accepted rent throughout remaining period of sublease, landlord had no right to demand possession because of anything which had occurred prior to expiration date of second sublease on ground that tenant was violating "obligation of tenancy" within statute. Code 1940, §§ 45-820, 45-904, 45-1605(b). *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Notice by tenant.

Tenant's oral notification that she intended to quit premises did not entitle landlord to possession of premises, as notice of intention to quit must be given in writing to be effective. D.C. Code 1981, §§ 45-1402 to 45-1404. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Where tenant at sufferance vacated premises on August 27 without giving landlord 30-day notice of his intention to quit, tenant was liable to rent only for 30 days subsequent to vacating. D.C. Code § 45-904. *Willis v. Retail Adjustment Bureau, Inc.*, 248 A.2d 823, 1969 D.C. App. LEXIS 189 (App. 1969).

A tenant at sufferance who vacated without giving required 30-day notice is liable for rent for 30 days during which notice would have run. D.C. Code § 45-904. *Willis v. Retail Ad-*

justment Bureau, Inc., 248 A.2d 823, 1969 D.C. App. LEXIS 189 (App. 1969).

Although tenant's wife on September 22 informed landlord's office that she and tenant would vacate apartment within 30 days, and also wrote landlord stating that they wished to move by October 1, where tenant paid and landlord accepted rent for October on October 4, even if notice was valid when given, neither landlord nor tenant was bound by it, and when tenant vacated on October 9, tenant vacated without giving required notice. D.C. Code 1951, §§ 45-820, 45-904. *Williams v. Tencher-Walker, Inc.*, 125 A.2d 58, 1956 D.C. App. LEXIS 221 (Cr.App. 1956).

Oral tenancies.

Under statute to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. D.C. Code 1951, §§ 45-820, 45-902, 45-904. *Cavalier Apartments Corp. v. McMullen*, 153 A.2d 642, 1959 D.C. App. LEXIS 278 (Cr.App. 1959).

Tenant holding apartment under verbal hiring by the month was a "tenant at sufferance". Code 1940, § 45-820. *Westchester Apartments v. Keroes*, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Persons entitled to notice.

Residents of shelter for homeless persons operated in federally owned building were not "tenants," entitled to 30 days notice to quit under District of Columbia Code [D.C. Code 1981, §§ 45-1403, 45-1404], because government never sought nor received any rent for use of shelter. D.C. Code 1981, § 45-1503(30). *Robbins v. Reagan*, 616 F. Supp. 1259, 1985 U.S. Dist. LEXIS 16689 (1985), affirmed in part by 780 F.2d 37, 250 U.S. App. D.C. 375, 1985 U.S. App. LEXIS 25053 (1985).

Tenant charged with nonpayment of rent was not entitled to 30-day notice to cure or vacate that could not expire any sooner than on the day of the month upon which his tenancy commenced. D.C. Code 1981, §§ 45-1404, 45-2551(a). *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services were servants rather than tenants, and were thus not entitled to 30-day notice required under statute pertaining to tenancies by sufferance; maintenance men did not have lease, and were allowed to occupy apartment only as incident to services they provided. D.C. Code 1981, § 45-

1404. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

A copy of purported lease signed only by tenant was not binding on landlord or its successor, and tenant could not claim benefit of provisions therein relating to notice to quit. D.C. Code 1940, § 45-904. *Sandler v. Wertlieb*, 60 A.2d 222, 1948 D.C. App. LEXIS 158 (Cr.App. 1948).

A roomer, although a tenant under the rent act, was not a tenant for other purposes, and was not entitled to benefit of statutory provisions requiring a notice to quit for termination of a tenancy. D.C. Code 1940, §§ 45-902 to 45-904, 45-1611(a, f). *Tamamian v. Gabbard*, 55 A.2d 513, 1947 D.C. App. LEXIS 184 (Cr.App. 1947).

Where landlord gave tenant permission to install an air cooling system for leased premises and thereafter gave tenant "permission to use" certain space not covered by lease for purpose of installing parts of the air cooling machinery, the language used did not create a "tenancy by sufferance" so as to require landlord to give tenant a 30 day notice to quit after expiration of lease with respect to the space permissively used. D.C. Code 1940, §§ 45-901, 45-904. *Thayer v. Brainerd*, 47 A.2d 787, 1946 D.C. App. LEXIS 145 (Cr.App. 1946).

Where lessee of one portion of premises occupied, added space as subtenant of second lessee, and by supplemental agreement with landlord proposed to occupy added space under covenants of original lease if second lessee vacated, and both leases expired before second lessee vacated, and lessor did not recognize lessee as a tenant of added space by accepting rent from him for such space, lessee occupied added space as a subtenant holding over, and since second lessee had no right to a 30 day notice to vacate, his lease having expired, lessee, as subtenant, also was without right to such notice. D.C. Code 1940, §§ 45-901, 45-904. *Thayer v. Brainerd*, 47 A.2d 787, 1946 D.C. App. LEXIS 145 (Cr.App. 1946).

Retaliatory evictions.

Evidence raised question for jury as to whether eviction by serving 30-day notice to quit on tenant, who had asserted violations of housing code of District of Columbia as defense to a prior action for possession, was based on an illicit retaliatory motive on part of landlord. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

In view of private enforcement mechanism established by District of Columbia City Council depending in part on right of tenant to withhold rent when a unit is rendered unsafe and unsanitary by substantial housing code violations, legislature no more intended to permit retaliatory evictions as punishment for rent

withholding than it intended to permit such evictions as punishment for reporting housing code violations and retaliatory motivation defense would be applicable where landlord seeks to evict by serving 30-day notice to quit on tenant at sufferance because she successfully set up housing code violations in a previous action for possession. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Where tenant had been successful in having lease declared void and unenforceable in prior action because property was unsafe and uninhabitable and was being evicted after expiration of 30 days' notice because landlord wished to withdraw property from rental market, tenant was not permitted to raise defense that landlord's action for recovery of possession was retaliatory. D.C. Code § 45-904. *Robinson v. Diamond Housing Corp.*, 267 A.2d 833, 1970 D.C. App. LEXIS 315 (App. 1970), reversed by 463 F.2d 853, 150 U.S. App. D.C. 17, 1972 U.S. App. LEXIS 10344 (1972).

Sufficiency of notice.

A notice to quit, under Code, § 1221, D.C. Code 1929, T. 25, § 314, "on the thirtieth day after service of this notice," "the said premises being necessary for me for my immediate personal occupancy after necessary repairs and alterations therein," held sufficient, under Rent Law, § 109 (c), as amended by Act May 22, 1922, § 9, 42 Stat. 547, to entitle plaintiff to possession, whether the property was being used for business purposes or not. *Weaver v. Koester*, 294 F. 1011, 1924 U.S. App. LEXIS 2972 (1924).

The Ball Rent Act, 41 Stat. 298, making the finding of the rent commission conclusive as to the right of a tenant in possession, merely changed the rule of evidence, and did not affect the jurisdiction of the municipal court over the subject-matter of an action between a landlord and tenant, and if neither party invoked the Ball Act the court could proceed as effectively as if the act had never been passed, so that the tenant cannot question in the Court of Appeals the sufficiency of the notice to quit under the Ball Act, after failing to raise that question in either of the lower courts. *Hayden v. Filippone*, 278 F. 329, 1922 U.S. App. LEXIS 2739 (1922).

Under Code of Law 1901, § 1221 (D.C. Code 1929, T. 25, § 314), providing that a tenancy by sufferance may be terminated by a notice to quit on the thirtieth day after day of service, a notice at the end of 30 days from the date of service is sufficient, since it gave the tenant at least full 30 days, and if it could be construed as giving more than 30 days that would not affect its validity. *Hayden v. Filippone*, 278 F. 329, 1922 U.S. App. LEXIS 2739 (1922).

Under Code, § 1221 (D.C. Code 1929, T. 25, § 314), requiring that notice from landlord to

tenant by sufferance to quit shall be in writing, a written notice served on defendant, and giving him the required length of time within which to leave the premises, was sufficient, though it was addressed to "Wm." Creel, while defendant's name was Richard. Creel v. Adams, 265 F. 456, 1920 U.S. App. LEXIS 1420 (1920).

When tenant remained in building after expiration of lease and continued to pay rent, tenant became tenant by sufferance, and thus 30 days' written notice to tenant to vacate premises was sufficient. D.C. Code §§ 45-820, 45-904. Oliver T. Carr Management, Inc. v. National Delicatessen, Inc., 397 A.2d 914, 1979 D.C. App. LEXIS 273 (1979).

Notice to quit given on July 31 to tenants whose lease expired on August 15 and who became tenants by sufferance thereafter was proper and, therefore, could serve as basis for possessory action. D.C. Code §§ 45-820, 45-904. Brown v. Young, 364 A.2d 1171, 1976 D.C. App. LEXIS 395 (1976).

Landlord's 30-day notice to quit did not comply with requirements of District of Columbia Rent Control Regulation where stated reason for demanding possession was the expiration of the tenant's lease and no showing was made that eviction could be had on some basis authorized by the regulation. D.C. Code §§ 45-820, 45-904. Jack Spicer Real Estate, Inc. v. Gassaway, 353 A.2d 288, 1976 D.C. App. LEXIS 485 (1976).

Tenancy of lessee after expiration of purchaser's 90-day notice to quit was subject to termination on 30 days notice to quit and 30-day notice given by purchaser was effective. D.C. Code 1961, § 45-904. Fisher v. Parkwood, Inc., 213 A.2d 757, 1965 D.C. App. LEXIS 253 (App. 1965).

Where evidence was insufficient to establish that tenant had any special form of lease, he was merely a tenant at sufferance, and a notice to quit which expired 30 days from December 20 was valid although tenancy commenced on first of the month. D.C. Code 1940, §§ 45-820, 45-904, 45-1605. Sandler v. Wertlieb, 60 A.2d 222, 1948 D.C. App. LEXIS 158 (Cr.App. 1948).

A landlord's notice to quit to tenant by sufferance, stating that notice expired on 30th day after day of service of notice, substantially complied with statute providing that tenancy by sufferance could be terminated at any time by notice in writing from landlord to quit premises on 30th day after day of service of notice.

D.C. Code 1940, § 45-904. Globe Clothing Shop v. Skolnick, 50 A.2d 271, 1946 D.C. App. LEXIS 187 (Cr.App. 1946).

A notice to tenant by sufferance to quit addressed to "Globe Clothing Shop" was not defective for failure to designate tenant as corporation, partnership, or individual, where notice was personally served on tenant and tenant was not misled by notice. D.C. Code 1940, § 45-904. Globe Clothing Shop v. Skolnick, 50 A.2d 271, 1946 D.C. App. LEXIS 187 (Cr.App. 1946).

A purely formal defect in notice to tenant by sufferance to quit may be ignored. D.C. Code 1940, § 45-904. Globe Clothing Shop v. Skolnick, 50 A.2d 271, 1946 D.C. App. LEXIS 187 (Cr.App. 1946).

Where tenant held over after expiration of lease and landlord desired premises for personal occupancy, 30-day notice to vacate was sufficient to terminate the tenancy notwithstanding that notice did not specify any one of the several grounds which, under the Emergency Rent Control Act, are made conditions to the right of a landlord to regain possession of residential property. D.C. Code 1940, §§ 45-904, 45-1605. Warthen v. Lamas, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Time for serving notice.

Notice to quit, served on tenant at sufferance who had sublet premises for definite period with landlord's consent on ground that tenant was violating obligation of tenancy within statute three weeks before any such alleged violation occurred, was premature, and had no anticipatory effect to reach future violations. Code 1940, §§ 45-820, 45-904, 45-1605(b). Westchester Apartments v. Keroes, 32 A.2d 869, 1943 D.C. App. LEXIS 172 (Cr.App. 1943).

Waiver of notice.

Where landlord's assignee did not file brief in tenant's appeal from judgment for unpaid rent, there was no statement of proceedings and evidence in the record and trial court did not certify that tenant's recital of the facts was correct, reviewing court would remand case for trial on tenant's claim that landlord's assignee was estopped to assert right to rent because of oral waiver by landlord-assignor of 30-day notice of intention to quit. D.C. Code § 45-904. Willis v. Retail Adjustment Bureau, Inc., 248 A.2d 823, 1969 D.C. App. LEXIS 189 (App. 1969).

§ 42-3205. Notice not to be recalled without consent; effect of expiration of notice.

Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord

shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1222; June 30, 1902, 32 Stat. 542, ch. 1329.)

Prior Codifications. — 1981 Ed., § 45-1405. 1973 Ed., § 45-905.

CASE NOTES

In general.

Acceptance of a month's rent during the running of a notice to quit does not create a new tenancy, or waive plaintiff's right to demand possession under the notice. *Maxwell v. Brayshaw*, 258 F. 957, 1919 U.S. App. LEXIS 1298 (1919).

Statute providing that landlord may not recall notice to vacate and that tenant may not recall notice of intention to quit premises, without consent of other party, applies to notice in writing, and does not permit substitution of oral notice for written notice. D.C. Code 1981, § 45-1405. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Where landlord gave tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, landlord was entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. D.C. Code §§ 45-820, 45-821, 45-905, 45-908. *Wilson v. John R. Pinkett, Inc.*, 265 A.2d 778, 1970 D.C. App. LEXIS 293 (App. 1970).

Where tenant sent to landlords by registered mail a check for rent for period beyond expiration date of 30 days' notice to quit served by landlords on tenant, but landlords refused to receive letter from postal authorities, landlords did not "accept" check, as regards issue whether

landlords had waived their notice to quit by accepting rent for a period beyond expiration date of the notice. *Givens v. Goldstein*, 52 A.2d 725, 1947 D.C. App. LEXIS 136 (Cr.App. 1947).

The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

This section provides only that a written notice, as opposed to oral notice, given by either landlord or tenant may not be withdrawn without the consent of the other. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the landlord wishes to retake possession for one of the reasons specified in § 45-2551. In all cases save (1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (Chapter 25 of this title). Thus, in effect, the Act creates residential tenancies of indefinite duration. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

§ 42-3206. Service of notice to quit.

Every notice to the tenant to quit shall be served in English and Spanish upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises. If the notice is posted on the premises, a copy of the notice shall be mailed first class U.S. mail, postage prepaid, to the premises sought to be recovered, in the name of the person known to be in possession of the premises, or if unknown, in the name

of the person occupying the premises, within 3 calendar days of the date of posting.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1223; June 29, 1984, D.C. Law 5-90, § 3, 31 DCR 2537.)

Cross references. — Alterations to units after notice to vacate, prohibition, see § 6-731.01 et seq.

Prior Codifications. — 1981 Ed., § 45-1406.

1973 Ed., § 45-906.

Legislative history of Law 5-90. — Law 5-90, the “Eviction Procedures Act of 1984,” was

introduced in Council and assigned Bill No. 5-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-131 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Acceptance of rent after notice.

Action for possession.

Construction and application.

In general.

Manner of service.

Notice to foreign-speaking persons.

Review.

Waiver.

Acceptance of rent after notice.

In suit by landlord for possession of realty, whether fact that after service of notice to quit premises, tenant mailed to manager of realty a check for next month's rent which was inadvertently deposited but thereafter returned to tenant and never credited to manager's account, constituted acceptance of the rent, and notice to quit became ineffective was for jury. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

The acceptance of rent by landlord from month to month tenant only for period during the running of notice to quit was not a waiver of such notice. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Action for possession.

Tenant was not entitled to relief from default judgment in favor of landlord in action for possession after selling the property; the tenant merely claimed to be out of town on date of hearing, had actual notice of the notice to vacate, received proper notice of the summons and complaint for possession through posting and mailing, and did not present an adequate defense, and the landlord and contract purchaser would suffer prejudice upon the setting aside of the default judgment. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

After personal service could not be accomplished on tenant in landlord's action for possession, posting of the complaint and summons,

followed by first-class mailing to the tenant's address, was proper. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

Tenant was not entitled to vacating of default in favor of landlord in action for possession; the tenant received the notice to vacate, did not file a verified answer, and failed to show good cause. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

Service of a notice to quit in the prescribed manner is, unless waived, a condition precedent to a landlord's suit for possession. *Russell v. HUD*, 836 A.2d 576, 2003 D.C. App. LEXIS 695 (2003).

Although service of notice to quit is not jurisdictional and can be waived, it is a condition precedent to the landlord's suit for possession. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

In forcible detainer action, testimony of witness that he sat in truck in front of premises and saw his driver hand notice to quit to defendant at front door of house was sufficient to establish proper service. D.C. Code 1940, §§ 11-735, 45-906. *Glenn v. Mindell*, 74 A.2d 835, 1950 D.C. App. LEXIS 155 (Cr.App. 1950).

Where tenant was served with notice to quit on March 1, and on July 26, 1949, realty was leased to third party, lease to be retroactive to May 1, 1949 and to be subject to outstanding tenancy and landlord agreed to assign all right and interest in any outstanding leases and agreements of existing tenants to third party and to assist in obtaining possession from existing tenants when called on to do so, and landlord and tenant suit was filed August 1, 1949, in name of landlord and of third party, landlord had not lost all right to file suit. D.C. Code 1940, § 45-904. *Rubenstein v. Swagart*, 72 A.2d 690, 1950 D.C. App. LEXIS 130 (Cr.App. 1950).

Conflicting evidence as to what occurred when landlord attempted to serve 30-day notice to quit upon tenant was for trial judge. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Construction and application.

Statutory provision governing service of notice to quit leased premises applies to commercial as well as residential tenancies. D.C. Code 1981, § 45-1406. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Statute specifying form of service of notice to quit leased premises, although unambiguous as to scope of its application, was silent as to its enforcement, necessitating recourse to legislative history and judicial praxis to determine legal effect of notice which did not meet statutory requirements. D.C. Code 1981, § 45-1406. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Statute, which requires personal service of notice to tenant to quit, controlled over statute, which permits service by mail. D.C. Code 1981, § 45-1406; §§ 45-1561, 45-1595 (repealed). *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Statute, which requires personal service of notice to tenant to quit, was more specific than statute, which permits service by mail of any information or document and, therefore, governed service of notice to quit. D.C. Code 1981, § 45-1406; §§ 45-1561, 45-1595 (repealed). *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

The statute providing for service of notice to tenant to quit must be read in its entirety. D.C. Code 1940, § 45-906. *Lynch v. Bernstein*, 48 A.2d 467, 1946 D.C. App. LEXIS 153 (Cr.App. 1946).

This section is subsumed in § 45-2551 and that section provides a specific enforcement provision that serves as a sanction for a violation of this section. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

In general.

Landlord who seeks to evict a tenant for violation of an obligation under the tenancy is not required to give the tenant a notice to quit in addition to a notice to cure or vacate. D.C. Code 1981, §§ 45-1406, 45-1561(b). *Cooley v. Suitland Parkway Overlook Tenants' Asso.*, 460 A.2d 574, 1983 D.C. App. LEXIS 376 (1983).

The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. D.C. Code 1961, §§ 11-736, 45-906. *Custis v. Klein*,

177 A.2d 268, 1962 D.C. App. LEXIS 243 (Cr.App. 1962).

A "notice to quit" is not process but is simply a notice given privately from one party to another terminating or attempting to terminate the landlord-tenant relationship, and the same exactness is not required in the serving of such a notice as in the serving of a summons. D.C. Code 1940, § 45-906. *Lynch v. Bernstein*, 48 A.2d 467, 1946 D.C. App. LEXIS 153 (Cr.App. 1946).

A "notice to quit" is not the equivalent of court process but is simply a notice given privately from one party to another terminating or attempting to terminate the landlord-tenant relationship and is without judicial effect unless followed by a court action. D.C. Code 1940, § 45-906. *Craig v. Heil*, 47 A.2d 871, 1946 D.C. App. LEXIS 148 (Cr.App. 1946).

Manner of service.

Where the landlord took a notice to quit to the premises and there delivered it to the tenant's 17 year old son at the request of tenant, who came to the head of the stairs, but stated she was too ill to come down, but to send the paper by her son, and the notice was thereafter immediately delivered to her by her son, there was substantial compliance with the requirement of Code of Law 1901, § 1223 (D.C. Code 1929, T. 25, § 316), that service be made personally on the tenant. *Hockman v. Shreve*, 269 F. 482, 1920 U.S. App. LEXIS 1868 (1920).

Where a landlord delivered a notice to quit to the tenant's wife, with request that she deliver it to the tenant, which she agreed to do and did do, there was sufficient service to comply with Code of Law 1901, § 1223 (D.C. Code 1929, T. 25, § 316), which requires personal service, but does not specify by whom the service shall be made, since the notice was personally served on the tenant by his wife. *Hardebeck v. Hamilton*, 268 F. 703, 1920 U.S. App. LEXIS 2353 (1920).

Absent showing that Department of Housing and Urban Development (HUD) diligently attempted to personally serve notice to quit on tenant, posting notice to quit on tenant's door and then mailing copy of notice to tenant did not fulfill statutory requirements. *Russell v. HUD*, 836 A.2d 576, 2003 D.C. App. LEXIS 695 (2003).

Statute concerning notice to tenant to quit premises requires that if landlord posts notice on premises, landlord must then mail copy of notice to tenant within three-day period following posting; posting and not then mailing will not comport with due process. U.S.C. Const. Amend. 14; D.C. Code 1981, § 45-1406. *Ayers v. Landow*, 666 A.2d 51, 1995 D.C. App. LEXIS 205 (1995).

Landlord who first mailed tenant a notice to quit, then posted notice to quit on tenant's door four times in the month that followed, did not

comply with statute providing that if notice to quit is posted, copy of notice must be mailed within three days of date of posting; thus, landlord could not prevail in suit for possession. D.C. Code 1981, § 45-1406. *Ayers v. Landow*, 666 A.2d 51, 1995 D.C. App. LEXIS 205 (1995).

A landlord seeking to serve tenant with a notice to quit should employ posting on the premises only as a last resort, and landlord must strictly comply with statutory requirements when using this method of service. D.C. Code 1981, § 45-1406. *Ayers v. Landow*, 666 A.2d 51, 1995 D.C. App. LEXIS 205 (1995).

Landlord that knew tenant's Colorado address and telephone number could not serve tenant by posting summons for eviction action on premises and could have served tenant by mail requiring signed receipt; landlord was unable to locate anyone residing on premises. D.C. Code 1981, §§ 13-401, 13-402, 13-423(a)(5), 13-424, 13-431(a)(3), 45-1406; Landlord and Tenant Rule 4. *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

More recent statute, which permits service by mail, did not conflict with statute, which requires personal service of notice to tenant to quit and, therefore, did not govern service of notice to quit. D.C. Code 1981, § 45-1406; §§ 45-1561, 45-1595 (repealed). *Graham v. Bernstein*, 527 A.2d 736, 1987 D.C. App. LEXIS 376 (1987).

Landlord's substituted service of notice to quit by using procedure for service of notice to cure and other notices instead of using procedure required for service of notices to quit was ineffective. D.C. Code 1973, § 45-906; D.C. Code 1980 Supp. § 45-1699.26. *Jones v. Brawner Co.*, 435 A.2d 54, 1981 D.C. App. LEXIS 361 (1981).

Despite evidence of actual receipt by tenant of notice to quit, service of notice was ineffective where landlord's slipping notice under tenant's door was not authorized by statute. D.C. Code 1973, § 45-906. *Jones v. Brawner Co.*, 435 A.2d 54, 1981 D.C. App. LEXIS 361 (1981).

Substituted service of notice to quit is less favored than delivery of the document to the tenant in person, and posting should be employed as a last resort. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

When landlord has to fall back on substituted service as method of service of notice to quit, he must strictly comply with the statutory requirements. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

Service of notice to quit by resident manager who knocked on tenants' door but received no response and who slipped notice, enclosed in an envelope, under the door, did not constitute

"posting in a conspicuous place" as required by statute and service of notice was defective. D.C. Code §§ 45-902, 45-906. *Moody v. Winchester Management Corp.*, 321 A.2d 562, 1974 D.C. App. LEXIS 236 (1974).

Notice to quit rented premises was not ineffective because served upon only one tenant the other tenant being in a foreign country, where the evidence indicated that the notice reached the wife of the other tenant, who was also his attorney in fact. *Tatum v. Townsend*, 61 A.2d 478, 1948 D.C. App. LEXIS 186 (Cr.App. 1948).

Notice to quit rented premises was not ineffective because served upon only one tenant the other being in a foreign country, where defendants not only were cotenants of the property but also partners in a rooming house venture conducted thereon. *Tatum v. Townsend*, 61 A.2d 478, 1948 D.C. App. LEXIS 186 (Cr.App. 1948).

Where one of the landlords personally handed month to month tenant a 30-day notice to quit, there was good service notwithstanding that tenant, after reading notice, stated she would not accept it and handed it back. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Where one of the landlords went to rented dwelling and inquired for month to month tenant, and, upon being told that she was not at home, delivered 30-day notice to quit to an adult person who came to the door, there was good service of such notice. *Pointer v. Shepard*, 49 A.2d 659, 1946 D.C. App. LEXIS 175 (Cr.App. 1946).

Where by terms of lease there was a tenancy from month to month commencing on the first of the month, notice tacked on door of premises on November 30, 1945, terminating lease on January 1, 1946, was sufficient as a 30-day notice whether tenant received notice before midnight on November 30th or in the early hours of December 1, 1945. D.C. Code 1940, § 45-906. *Lynch v. Bernstein*, 48 A.2d 467, 1946 D.C. App. LEXIS 153 (Cr.App. 1946).

Where attempt was made at 10:30 p. m. to serve on tenant a notice to quit and another attempt was made at 11 p. m. same evening, and an earlier attempt would have proved unsuccessful and notice to quit was tacked on door of premises, service of notice was sufficient. D.C. Code 1940, § 45-906. *Lynch v. Bernstein*, 48 A.2d 467, 1946 D.C. App. LEXIS 153 (Cr.App. 1946).

Landlord could select Post Office Department as his delivering agent for service of a notice to quit upon tenant by the employment of registered mail, prescribing delivery to addressee only with demand for a return receipt, so long as such method resulted in notice being served personally upon tenant. D.C. Code 1940, § 45-906. *Craig v. Heil*, 47 A.2d 871, 1946 D.C. App. LEXIS 148 (Cr.App. 1946).

Service of notice to quit upon tenant need not be made by landlord in person but may be made by any person acting for landlord so long as tenant receives notice in time to allow him the statutory period to vacate, the same exactness not being required in serving such a notice as in serving a summons. D.C. Code 1940, § 45-906. *Craig v. Heil*, 47 A.2d 871, 1946 D.C. App. LEXIS 148 (Cr.App. 1946).

Inserting notice to quit between door and doorjamb of rented premises was insufficient to satisfy statute governing service of such notice by posting on the premises, even if tenant actually received the notice. *Independence Management of Delaware, Inc. v. Ortiz*, 132 WLR 1969 (Super. Ct. 2004).

Notice to foreign-speaking persons.

Statutorily required notice to quit leased commercial premises was not ineffective because it was not written in Spanish as well as English, as required by statute, where undisputed evidence established that lessee read and understood English but did not read or understand Spanish and thus suffered no prejudice. D.C. Code 1981, § 45-1406. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

This section ensures that Spanish-speaking residential tenants will not be evicted following the receipt of a notice which is incomprehensible to them and that they will be given a full opportunity to assert their rights in court. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

Requirement that a notice to quit be served in both Spanish and English is required for all residential tenants. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

Judicial admission, which asserts that a notice was received and understood, though served only in English, can similarly act as a waiver of requirement that a notice to quit be served in English and Spanish. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

Review.

Court of Appeals reviewed de novo, as a question of law, the issue of whether statute concerning a landlord's notice to quit premises permits a mailing of such notice a substantial period before service by posting. D.C. Code 1981, § 45-1406. *Ayers v. Landow*, 666 A.2d 51, 1995 D.C. App. LEXIS 205 (1995).

Waiver.

Landlord's evidence of tenant's actual receipt of notice to quit, as distinguished from tenant's judicial admission of receipt, does not constitute waiver of statutory requirements for substituted service. D.C. Code 1973, § 45-906. *Jones v. Brawner Co.*, 435 A.2d 54, 1981 D.C. App. LEXIS 361 (1981).

Although notice to quit is a condition precedent to the filing of a suit for possession of renter's premises, it is not so in a jurisdictional sense, and it may be waived when tenancy is created or at a later time. D.C. Code 1940, §§ 45-906, 45-908. *Craig v. Heil*, 47 A.2d 871, 1946 D.C. App. LEXIS 148 (Cr.App. 1946).

§ 42-3207. Refusal to surrender possession; double rent.

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1224.)

Prior Codifications. — 1981 Ed., § 45-1407. 1973 Ed., § 45-907.

CASE NOTES

ANALYSIS

In general.
Lease provisions.

In general.

Evidence in landlord's suit for double rent supported finding that tenants had not refused to surrender possession without reasonable ex-

cuse in accordance with notice to quit. D.C. Code 1961, § 45-907. *Paton v. Rose*, 205 A.2d 609, 1964 D.C. App. LEXIS 175 (App. 1964).

Lease provisions.

Pursuant to liquidated-damages and cost-on-default provisions of commercial leases, landlord was entitled to recover triple rent and attorneys' fees after tenant held over on prop-

erty, notwithstanding tenant's claim that it remained on premises on basis of reasonable good-faith understanding of legal rights; liquidated damages provision of leases did not include bad-faith requirement. *Horn & Hardart Co. v. National Rail Passenger Corp.*, 843 F.2d 546, 1988 U.S. App. LEXIS 4471 (C.A.D.C. 1988), writ of certiorari denied by 488 U.S. 849, 109 S. Ct. 129, 102 L. Ed. 2d 102, 1988 U.S. LEXIS 4031, 57 U.S.L.W. 3233 (1988).

Lease provision authorizing triple rent upon failure to surrender possession of premises was valid and not preempted by District of Columbia statute authorizing double damages if tenant refused to surrender possession after having given notice of intention to quit; thus lessee would be required to pay amount equal to three times monthly liquidated damages for five-

month period, reduced by amount of rent actually paid during hold-over period. D.C. Code 1981, § 45-1407. *Horn & Hardart Co. v. National R. Passenger Corp.*, 659 F. Supp. 1258, 1987 U.S. Dist. LEXIS 3492 (1987), affirmed by 843 F.2d 546, 269 U.S. App. D.C. 53, 1988 U.S. App. LEXIS 4471 (1988).

Clause in sublease imposing double rent for subtenant's holding over was permissible liquidated damages, rather than unlawful penalty, in light of statute authorizing double rent for holding over in another context, and in light of fact that prime tenant would remain liable to landlord even though enjoying no use of property. D.C. Code 1981, § 45-1407. *Sanchez v. Eleven Fourteen, Inc.*, 623 A.2d 1179, 1993 D.C. App. LEXIS 106 (1993).

§ 42-3208. Parties may agree to alternate notice provisions; waiver.

Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1236.)

Prior Codifications. — 1981 Ed., § 45-1408. 1973 Ed., § 45-908.

CASE NOTES

ANALYSIS

Action for possession.
Month to month tenancies.
Waiver of notice.

Action for possession.

Where in District of Columbia Municipal Court question whether 30 days' notice to quit had been waived by tenant was raised by pleadings but no evidence of waiver was adduced at trial, tenant's failure to call absence of proof to trial court's attention was equivalent to waiver or at least waiver of proof of notice. D.C. Code 1940, § 45-908. *Zindler v. Buchanan*, 61 A.2d 616, 1948 D.C. App. LEXIS 194 (Cr.App. 1948).

A notice to quit is a condition precedent to filing of action by landlord to recover possession of premises from tenant, but is not jurisdictional. D.C. Code 1940, § 45-908. *Zindler v. Buchanan*, 61 A.2d 616, 1948 D.C. App. LEXIS 194 (Cr.App. 1948).

In landlord's action to recover premises, landlord's failure to give notice to quit is not an automatic defense and can be waived or relinquished. D.C. Code 1940, § 45-908. *Morris v. Breaker*, 38 A.2d 632, 1944 D.C. App. LEXIS 193 (Cr.App. 1944).

In landlord's action to recover premises from tenant where tenant testified that she had waived service of a notice to quit, tenant waived defense of failure of landlord to serve such notice. D.C. Code 1940, § 45-908. *Morris v. Breaker*, 38 A.2d 632, 1944 D.C. App. LEXIS 193 (Cr.App. 1944).

Month to month tenancies.

Since residential landlord understood on September 29 that leased premises were still occupied, constructively, by the month-to-month tenant, landlord, having accepted rent through September 30 pursuant to the terms of lease, was estopped to claim that the tenancy ended any sooner, and, having refused the tenant a new key for newly installed locks during brief, two-day period when lease was still in effect, the landlord was further estopped to claim that the tenancy extended any later than September 30, the date through which the tenant claimed a right to occupy the premises. *Hinton v. Sealander Brokerage Co.*, 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

Although month-to-month residential tenant had given her "30-day notice to move" on third day of month, there was no basis for a finding

that tenant, who paid her rent through 30th day of that month, intended for the lease to run through third day of subsequent month, and, because tenancy itself could end only upon the last day of an ensuing month upon proper notice, lease was in effect through month in which notice was given, but no later. *Hinton v. Sealander Brokerage Co.*, 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

Month-to-month tenancy could end only upon the last day of an ensuing month upon proper notice. *Hinton v. Sealander Brokerage Co.*, 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

Notice of termination of tenancy from month to month cannot be made to expire at time other than end of month, notwithstanding Code provision allowing parties to lease to substitute a longer or shorter period of notice than the thirty days which would be otherwise required by Code. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. D.C. Code 1940, §§ 45-821, 45-902, 45-908. *Dorado v. Loew's, Inc.*, 88 A.2d 188, 1952 D.C. App. LEXIS 158 (Cr.App. 1952).

Tenant may be given more than 30 days' notice of termination of month to month tenancy without affecting validity of notice. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Provision of lease that tenant, if not in default, was entitled to not less than 30 days' notice to vacate, which notice was to be given, in writing, at least 30 days before the tenancy was intended to be terminated, was a valid contract substitution for the code provision pertaining to notice to terminate a tenancy from month to month. D.C. Code 1940, § 45-902. *Zoby v. Kosmadakes*, 61 A.2d 618, 1948 D.C. App. LEXIS 195 (Cr.App. 1948).

Waiver of notice.

Where tenant, who became tenant by sufferance after expiration of year lease, defaulted in paying rent for two months, he was not entitled to notice to vacate (D.C. Code 1929, T. 25, Secs. 280, 318). Lease for one year provided that in event of tenant's holding over he should give landlord at least 30 days' notice of intention to vacate, and that tenant should be entitled to like notice that landlord desired possession of

property, but that in event rent should not be paid in advance without demand tenant should 'not be entitled to any notice to quit, the usual thirty days' notice being hereby expressly waived.' *H.L. Rust Co. v. Drury*, 68 F.2d 167, 1933 U.S. App. LEXIS 4915 (1933).

Even though landlord could have demanded full 30-day notice from tenant who sought to end month-to-month tenancy, if landlord had not locked out tenant upon its alleged belief that tenant had abandoned the premises, landlord's conduct in withholding key to premises for period in which lease was still in effect and landlord had become aware that tenant had not abandoned her personal property or her right to enter premises to retrieve such property was sufficient to imply the landlord's waiver of any notice otherwise required of the tenant. *Hinton v. Sealander Brokerage Co.*, 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

Tenant who initially orally told landlord she intended to quit premises did not waive her right to written notice to vacate before landlord could seek possession; even if tenant can waive right to written notice, such waiver must be in writing, and tenant did not relinquish possession of premises when her plans to quit premises fell through. D.C. Code 1981, § 45-1408. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and was estopped to rely on statute relating to termination of tenancy and was not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with statutory requirement. D.C. Code §§ 17-305, 45-902, 45-908. *Sklar v. Hightower*, 342 A.2d 57, 1975 D.C. App. LEXIS 426 (1975).

Where landlord gave tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, landlord was entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. D.C. Code §§ 45-820, 45-821, 45-905, 45-908. *Wilson v. John R. Pinkett, Inc.*, 265 A.2d 778, 1970 D.C. App. LEXIS 293 (App. 1970).

Although notice to quit is a condition precedent to the filing of a suit for possession of renter's premises, it is not so in a jurisdictional sense, and it may be waived when tenancy is created or at a later time. D.C. Code 1940, §§ 45-906, 45-908. *Craig v. Heil*, 47 A.2d 871, 1946 D.C. App. LEXIS 148 (Cr.App. 1946).

Where lease provided that no notice to quit should be necessary if default in rent occurred, but in landlord's suit for possession, a confession of judgment and stipulation was filed per-

mitting tenant to continue in possession and providing a new method of rent payment, the lease, including the waiver clause, remained in force and tenant was not entitled to a 30-day notice to quit before a new suit for possession could be filed against him. *Klein v. Insurance Bldg.*, 46 A.2d 368, 1946 D.C. App. LEXIS 112 (Cr.App. 1946).

A notice to quit is a condition precedent to the filing of an action by landlord to obtain premises from tenant but is not jurisdictional and may be waived when tenancy is created or at any later time. D.C. Code 1940, § 45-908. *Morris v. Breaker*, 38 A.2d 632, 1944 D.C. App. LEXIS 193 (Cr.App. 1944).

§ 42-3209. Recovery of real and personal property leased together.

Whenever real and personal property are leased together, as, for example, a house with furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, in the Superior Court of the District of Columbia, may have a judgment for recovery of the personalty as well as the realty.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 167(1).)

Cross references. — Possessory actions, 1973 Ed., § 45-909.
see § 16-1501 et seq.

Prior Codifications. — 1981 Ed., § 45-1409.

§ 42-3210. Action in ejectment — When proper.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the Superior Court of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(c)(1)(J), 167(2).)

Cross references. — Possessory actions, 1973 Ed., § 45-910.
see § 16-1501 et seq.

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Tenant in possession held entitled to thirty-day notice to quit before purchaser at foreclosure sale of premises institutes summary proceedings for possession (D.C. Code 1929, T. 18, § 225, T. 25, §§ 282, 313, 320). *Thornhill v. Atlantic Life Ins. Co.*, 70 F.2d 846, 1934 U.S. App. LEXIS 4333 (1934).

Tenant was not entitled to relief from default judgment in favor of landlord in action for possession after selling the property; the tenant merely claimed to be out of town on date of hearing, had actual notice of the notice to vacate, received proper notice of the summons and complaint for possession through posting and mailing, and did not present an adequate defense, and the landlord and contract purchaser would suffer prejudice upon the setting aside of the default judgment. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

After personal service could not be accomplished on tenant in landlord's action for possession, posting of the complaint and summons, followed by first-class mailing to the tenant's address, was proper. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

Tenant was not entitled to vacating of default in favor of landlord in action for possession; the tenant received the notice to vacate, did not file a verified answer, and failed to show good cause. *Pelkey v. Endowment for Cmty. Leadership*, 841 A.2d 757, 2004 D.C. App. LEXIS 36 (2004).

Tenant was properly served with summons and complaint for possession of real property; process server went to premises to serve tenant with summons and complaint and, after being informed that tenant was out of state and that tenant's employee was authorized to receive service, summons and complaint were left with employee. D.C. Code 1989, § 16-1502. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

Landlord bringing possessory action would be required to file certified statement of costs with Rental Housing Commission only, and not with court. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Granting landlord possession of premises on December 31, by virtue of granting landlord's motion stating that lease would terminate on

such date, was improper where motion was made before expiration date of lease. D.C. Code § 45-910. *Zanakis v. Brawner Bldg., Inc.*, 377 A.2d 67, 1977 D.C. App. LEXIS 379 (1977).

While oral motion by tenant for stay in possessory action is sanctioned, absent extraordinary circumstances, landlord should have notice of such motion and opportunity to be heard before trial court rules thereon. D.C. Code SCR, LT Rule 13. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Normally, defense of housing code violations would be irrelevant in possessory action based solely upon valid 30-day notice to quit. D.C. Code SCR, LT Rules 3, 5, 5(b). *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Denial of landlord's request for summary possession against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, on ground that granting of request would unduly impinge on class action challenging lawfulness of such increases was proper, notwithstanding contention that landlord's right to do with its property as it pleased would be impaired and contention that tenants in summary possession suit did not put into issue the lawfulness of the rent increases and thus such issue should not have been considered. D.C. Code § 45-910. *F. W. Berens Sales Co. v. McKinney*, 310 A.2d 601, 1973 D.C. App. LEXIS 379 (1973).

In landlord's action to recover possession of store from tenant after expiration of lease, testimony as to landlord's reasons for seeking of possession was inadmissible. D.C. Code 1940, § 45-910. *Fowel v. Continental Life Ins. Co.*, 55 A.2d 205, 1947 D.C. App. LEXIS 178 (Cr.App. 1947).

Where action by husband and wife as landlords for possession of housing accommodations was brought as a summary proceeding, the verification of complaint by husband, for himself and as agent for his wife, was authorized by the statute providing that complaint shall be verified by person aggrieved or by his agent or attorney having knowledge of the facts. D.C. Code 1940, §§ 11-735, 45-910. *Wynn v. Washington*, 53 A.2d 275, 1947 D.C. App. LEXIS 142 (Cr.App. 1947).

Under the Emergency Rent Control Act, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to grounds upon which landlord may claim right of possession, remains the same as it was previously. D.C. Code 1940, §§ 11-735, 45-910, 45-1605. *Warthen v. Lamas*, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Amendment of pleadings.

Either landlord, seeking to recover possession for failure to pay rent, or tenant, seeking to

defeat landlord's action on ground of breach of implied warranty of habitability, should be permitted to amend its complaint or answer at any time before trial, to allege change in condition; in such event finder of fact should make a separate finding as to condition at time at which amendment was filed and such new finding should have no effect on original action but only affect distribution of any escrowed rent paid after filing of amendment. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1970 U.S. App. LEXIS 9377 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185, 1970 U.S. LEXIS 386 (1970).

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was mere licensee or trespasser upon premises in question, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance," in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. D.C. Code 1940, § 45-910; Rules of Municipal Court for the District of Columbia, rules 1, 15(b). *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Landlord who chose to rely upon expiration of 30-day notice to quit, rather than upon apparently unpaid past rent, waived right to claim rental arrearages in proceeding for possession of premises, and could not have amended complaint to assert claim for rent due, though he was free to seek recovery of back rent in separate action. D.C. Code § 45-902. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Landlord's motion to amend complaint to claim rent in arrears was properly denied where original suit for possession contained no claim for rent. *Miles Realty Co. v. Garrett*, 292 A.2d 152, 1972 D.C. App. LEXIS 414 (1972).

Trial court, in action by lessor against lessees for possession of leased office suites for failure to pay rent, did not abuse its discretion in refusing to permit one lessee to amend his answer to allege that lessor had violated building code by failing to provide two means of egress from building where lessee must have been aware of building structure at time he leased suite and again two years later when he filed his first answer and lessee did not explain or justify his failure to raise such defense timely. D.C. Code General Sessions Court Rules, § 1, rule 15(a). *Dietz v. Miles Holding*

Corp., 277 A.2d 108, 1971 D.C. App. LEXIS 317 (1971).

Attorney fees.

Though landlord's summary possession suit against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, may have been brought to achieve tactical advantage in class action challenging lawfulness of such increases, suit was not so clearly unwarranted or so vexatious, wanton or oppressive as to justify award of counsel fees to tenants on dismissal of suit. D.C. Code § 45-910. *F. W. Berens Sales Co. v. McKinney*, 310 A.2d 601, 1973 D.C. App. LEXIS 379 (1973).

Construction and application.

Purpose of District of Columbia statutes governing summary proceedings by landlord to regain possession of premises is to provide court relief to landlord, otherwise trapped by relatively slow, fairly complex and substantially expensive procedure of the common-law possessory action of ejectment, to avoid resort to self-help and force, condoned at common law as justified, and to permit an expeditious judicial determination of what remains in possessory action. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Where purchasers of house at foreclosure sale notified mortgagor-owner to quit immediately after their purchase in May, where they did not sue for possession until after settlement took place in July, where the court treated their suit as a civil action rather than a summary action for possession and did not render decision until January, and where, during all that time, mortgagor occupied the house with knowledge that her right to possession was in issue, there was compliance with statute's purpose of giving a former owner of real estate when sold out under a mortgage reasonable notice and time to peaceably remove himself and his belongings from the property sold before being made a defendant in a summary proceeding in court. D.C. Code §§ 45-822, 45-903, 45-910. *Rinaldi v. Wallace*, 293 A.2d 847, 1972 D.C. App. LEXIS 410 (1972).

The effect of section of Emergency Rent Control Act restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. D.C. Code 1940, §§ 11-735, 45-910, 45-1605. *Warthen v. Lamas*, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Dismissal of action.

Once tenants successfully moved in open

court through their attorneys to have landlord's suits for possession dismissed as moot, tenants were thereafter equitably estopped from later asserting a claim to entitlement to possession. *Atkins v. United States*, 283 A.2d 204, 1971 D.C. App. LEXIS 228 (1971).

Due process.

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. D.C. Code 1951, §§ 45-902, 45-910; United States Housing Act, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; Independent Offices Appropriation Act of 1953, § 101 as amended 42 U.S.C. § 1411c. *Rudder v. U.S.*, 226 F.2d 51, 1955 U.S. App. LEXIS 3014 (C.A.D.C. 1955).

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was, without regard to issue of constitutionality of Gwinn Amendment, providing that certain units should not be occupied by any member of organization designated as subversive, arbitrary and violative of due process requirements. D.C. Code 1951, §§ 45-902, 45-910; Executive Order No. 9835, 5 U.S.C. § 631 note; United States Housing Act, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; Independent Offices Appropriation Act of 1953, § 101 as amended 42 U.S.C. § 1411c. *Rudder v. U.S.*, 226 F.2d 51, 1955 U.S. App. LEXIS 3014 (C.A.D.C. 1955).

Grounds for eviction.

It was the intent of Congress, which directed enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. U.S. Const. Amends. 1, 5, 14; D.C. Code §§ 16-1501, 45-902, 45-910. *Edwards v. Habib*, 397 F.2d 687, 1968 U.S. App. LEXIS 6913 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 1016, 89 S. Ct. 618, 21 L. Ed. 2d 560, 1969 U.S. LEXIS 2900 (1969).

Even if there was reduction of services by landlord after racial composition of apartment building changed, such discrimination did not license any tenant, black or white, to indulge in threats of physical violence, by reason of which landlord served eviction notice. *Miller v. District of Columbia Com. on Human Rights*, 352 A.2d 387, 1976 D.C. App. LEXIS 474 (1976).

Ordinarily, the United States like any private landlord, may exercise its right to terminate a monthly tenancy by serving a statutory notice to quit, without revealing any other reason. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

Where housing authority in its lease for an apartment in a low-rent housing project constructed under United States Housing Act inserted a provision that it might terminate the lease for any one of eight listed reasons, or for others not named, such provision indicated a contractual intent that the tenants were not to be evicted except for certain reasons. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

Where housing authority in its lease for an apartment in a low-rent housing project constructed under United States Housing Act inserted a provision that it might terminate the lease for any one of eight listed reasons or for others not named, and notice to quit stated reason that tenants in effect had violated Gwinn Amendment when they failed to execute certificate of nonmembership in subversive organization, tenants, in resisting suit by United States for possession, were entitled to show that Gwinn Amendment was unconstitutional. United States Housing Act of 1937, § 1 et seq. as amended 42 U.S.C. § 1401 et seq.; 42 U.S.C. § 1411c; D.C. Code 1951, §§ 11-735, 45-902, 45-910. *Rudder v. U.S.*, 105 A.2d 741, 1954 D.C. App. LEXIS 144 (Cr.App. 1954).

Where lease prohibited keeping of dogs in apartment but landlord conditionally granted tenants permission to keep dog subject to withdrawal if other tenants complained, tenants' refusal to remove dog when permission was withdrawn entitled landlord to recover possession. *Shay v. Randall H. Hagner & Co.*, 34 A.2d 358, 1943 D.C. App. LEXIS 197 (Cr.App. 1943).

Where lease contained covenant prohibiting keeping of dogs, and provided that waiver of breach of covenant could not be construed as waiver of covenant, even though landlord conditionally granted permission to tenants to keep dog, the covenant was not waived and could be enforced by action for possession of premises on withdrawal of permission. *Shay v. Randall H. Hagner & Co.*, 34 A.2d 358, 1943 D.C. App. LEXIS 197 (Cr.App. 1943).

In general.

In landlord-tenant litigation the court's authority to order a turnover from in-court fund must be cautiously and sparingly utilized.

Cooks v. Fowler, 459 F.2d 1269, 1971 U.S. App. LEXIS 6816 (C.A.D.C. 1971).

Judicial protection of landlord, whether pre-trial or post-trial, can be justified only within area of fair compensation for possession he loses during period of landlord-tenant litigation. *Cooks v. Fowler*, 459 F.2d 1269, 1971 U.S. App. LEXIS 6816 (C.A.D.C. 1971).

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. D.C. Code 1940, §§ 11-703, 11-704, 11-735, 11-738, 16-513, 45-910; Act March 3, 1901, § 987, 31 Stat. 1347. *Shapiro v. Christopher*, 195 F.2d 785, 1952 U.S. App. LEXIS 3030 (C.A.D.C. 1952).

Collateral estoppel did not require award of punitive damages to evicted tenant on the basis of bad-faith determination made by the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs, in view of the discretionary nature of such an award and the egregiousness of the conduct that must underlie such damages. *Camacho v. 1440 Rhode Island Ave. Corp.*, 620 A.2d 242, 1993 D.C. App. LEXIS 26 (1993).

Landlord was not entitled to preliminary injunction to prevent tenants from withdrawing withheld rent payments from bank account where payments were deposited in rent strike suit which alleged unlawful conspiracy and interference with landlord and tenant relationship, even though rent control legislation had been enacted, where comprehensive statutory scheme for landlord and tenant disputes provided adequate legal remedy; landlord had alternative legal remedies of commencing action for ejectment and could request protective order whereby tenants paid rent into court managed registry. D.C. Code 1981, §§ 45-1410, 45-1411, 45-1413, 45-1414, 45-2501 et seq. *Serafin v. 1458 Columbia Rd., N.W.*, 592 A.2d 1063, 1991 D.C. App. LEXIS 177 (1991).

Landlords' covenant for quiet enjoyment went only to possession, which was not disturbed by landlords' first suit for possession. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Statutory remedy is, as a rule, merely cumulative and does not abolish existing common-law remedy unless so declared in express terms or by necessary implication. D.C. Code §§ 16-1501, 22-3101, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than \$200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in

lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. D.C. Code 1940, §§ 11-735, 45-904, 45-910, 45-1605. *Warthen v. Lamas*, 43 A.2d 759, 1945 D.C. App. LEXIS 118 (Cr.App. 1945).

Jurisdiction of court.

Authority to limit possessory relief within court's jurisdiction, i.e., giving tenant a power to avoid eviction conditional on payment of money, does not establish a right to provide relief to landlord outside court's jurisdiction. D.C. C.E. §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

District of Columbia statute providing that a landlord may bring an ejectment action to recover possession in Superior Court of District of Columbia did not create an exception to tenant's right to remove to federal court an action for damages, possession and waste, and an action solely for possession of real estate, where the parties were of diverse citizenship and the amount in controversy exceeded \$10,000, because nothing in the statute referred to removal or otherwise suggested Congress' intent to divest federal courts of diversity jurisdiction. D.C. Code 1981, § 45-1410; 18 U.S.C. §§ 1332(a), 1441(a). *Eckert v. Fitzgerald*, 550 F. Supp. 88, 1982 U.S. Dist. LEXIS 15527 (1982).

Under District of Columbia ejectment statute as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. 18 U.S.C. §§ 1345, 1441, 1441(a), 1446(d), 1447(c); D.C. Code §§ 5-103 et seq., 11-503, 45-910. *Herian v. United States*, 363 F. Supp. 287, 1973 U.S. Dist. LEXIS 12782 (1973).

In view of express terms of 1970 Court Reform Act, District of Columbia ejectment statute as amended by 1970 Court Reform Act was not "Act of Congress" within statute giving original jurisdiction in district court of suits brought by the United States except as otherwise provided by Act of Congress. 18 U.S.C. § 1345; D.C. Code § 45-910. *Herian v. United States*, 363 F. Supp. 287, 1973 U.S. Dist. LEXIS 12782 (1973).

A possessory suit must be heard in the Landlord and Tenant Branch and can be brought upon the basis of a notice to quit. D.C. Code § 45-910; D.C. Code SCR, LT Rule 1. *Brown v. Young*, 364 A.2d 1171, 1976 D.C. App. LEXIS 395 (1976).

Power of court to assess amount of rent owed in summary possessory action does not give rise to an expanded authority simultaneously to

adjudicate all conflicting claims between landlord and tenant. D.C. Code SCR, LT Rule 5(b); D.C. Code §§ 16-1501 to 16-1503, 45-910. *Winchester Management Corp. v. Staten*, 361 A.2d 187, 1976 D.C. App. LEXIS 323 (1976).

Rule of landlord and tenant branch of superior court relating to counterclaims did not permit filing of counterclaim for damage to tenant's personalty in landlord's action for possession of premises based upon nonpayment of rent. *Miles Realty Co. v. Garrett*, 292 A.2d 152, 1972 D.C. App. LEXIS 414 (1972).

In landlord's action filed in landlord and tenant branch of superior court against tenant for possession of premises for nonpayment of rent, counterclaim for damage to tenant's personalty caused by water in the apartment was improperly filed. *Miles Realty Co. v. Garrett*, 292 A.2d 152, 1972 D.C. App. LEXIS 414 (1972).

Jurisdiction of municipal court for the District of Columbia, over summary suits to recover possession of realty, is limited under statutes to actions by landlords against tenants and to the action of forcible entry and detainer, where the conventional relation of landlord and tenant exists or has existed between the parties. D.C. Code 1940, §§ 11-735, 45-910. *Spruill v. Brooks*, 68 A.2d 204, 1949 D.C. App. LEXIS 224 (Cr.App. 1949).

Municipal Court for the District of Columbia was without jurisdiction of an action for the recovery of real estate on ground that defendant held premises as a tenant at will of plaintiff, because of prior litigation involving the property wherein plaintiff was ordered to be credited with the rent actually collected, where no connection between the defendant and previous occupants was shown and plaintiff expressly disclaimed that defendant was in possession as result of an agreement with her. D.C. Code 1940, §§ 11-735, 16-501 et seq., 45-822, 45-910. *Spruill v. Brooks*, 68 A.2d 204, 1949 D.C. App. LEXIS 224 (Cr.App. 1949).

Malicious prosecution.

Where malicious prosecution claim arose from very filing of landlords' second suit for possession, claim did not arise out of same transaction or occurrence that was subject matter of landlords' suit, i.e., alleged nonpayment of rent, and therefore there was no requirement that malicious prosecution claim be brought as compulsory counterclaim in that suit; such counterclaim was also barred by rule prohibiting filing, in suit for possession in landlord and tenant branch, of counterclaim for other than money judgment based on payment of rent or on expenditures claimed as credits against rent or for equitable relief related to premises. D.C. Code SCR, LT Rule 5(b); D.C. Code SCR, Civil Rule 13(a). *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

If both of landlords' two suits against tenant, for possession of premises, were found to have been brought with malice and without probable cause, jury could reasonably find special injury to tenant, as required element of suit by tenant for malicious prosecution. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Where tenant had tendered payment of all rent due when second suit for possession was instituted by landlords, and payments had been returned by landlords and only three weeks after adverse judgment in suit for possession and apparently without any request for tenant to pay back rent, other than bill for April rent sent tenant shortly after end of first suit, landlords instituted second suit for possession, and suit was dismissed when tenant agreed to pay back rent already tendered unsuccessfully, and landlords received only payments which tenant previously had offered them and failed to gain possession of realty, second suit for possession was "unsuccessful" for purposes of malicious prosecution. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Landlord's suit for possession, resulting in payment of rent, may be considered "successful" for purposes of malicious prosecution action only if landlord has made unsuccessful good-faith attempt to secure payment prior to filing his suit for possession. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Whether there was termination of suit for possession, in favor of defendant, was, for purposes of malicious prosecution suit, question of law normally to be determined by trial court, insofar as requiring court to draw conclusion based on its legal judgment as to significance of prior judgment in light of relief requested. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Factual determination, by jury in action for malicious prosecution, that malice and lack of probable cause were present in bringing of first suit for possession was crucial to verdict rendered and would be conclusive in any further malicious prosecution proceedings relating to landlords' second suit for possession, under doctrine of res judicata. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Matters determined.

Where tenants asserting illegality of rent increases in their pleadings in response to landlord's possessory action did not seek review of either of the two challenged rent increases before the rent administrator, lower court should not have undertaken to determine the validity of the rent increases. *Drayton v.*

Poretzsky Management, Inc., 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Landlord's possessory action when decided in favor of landlord determines finally as between the parties that there is a tenancy between the parties, that the lease between the parties is valid and that rent is due and owing by tenant, and thus for all practical purposes a decision for landlord determines by principle of *res judicata* all other matters at issue between the two parties. D.C. Code General Sessions Court Rules, § 2, rule 3. *Atkins v. United States*, 283 A.2d 204, 1971 D.C. App. LEXIS 228 (1971).

Parties.

The factors considered in determining whether an occupant has exclusive possession, and whether he is thus a tenant, rather than a roomer, include: (1) whether the owner provided furnishings, linens, towels, and daily maid service to the occupant; (2) the owner's right to access the room; (3) the number of rooms provided; (4) the scheduled interval for payment (e.g., daily, weekly, monthly); (5) the substance of the contract between the owner and the occupant; and (6) any other conditions of occupancy. *Harkins v. Win Corp.*, 771 A.2d 1025, 2001 D.C. App. LEXIS 101 (2001), modified and rehearing denied by 777 A.2d 800, 2001 D.C. App. LEXIS 166 (D.C. 2001).

Where tenant terminated his tenancy by notice acceptable to landlord but tenant's estranged wife remained in possession of premises, landlord's action to recover possession of premises was properly brought against the tenant and it was not necessary that the tenant's estranged wife, who was not a party to lease, should be named as defendant. D.C. Code 1940, § 45-910. *Scott v. H. G. Smithy Co.*, 53 A.2d 45, 1947 D.C. App. LEXIS 140 (Cr.App. 1947).

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of code section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule restricting right to maintain suit to real party in interest. Rules of the Municipal Court, rule 17(a); Federal Rules of Civil Procedure, rule 17(a), 18 U.S.C. following section 723c; D.C. Code 1940, § 45-910. *Koehne v. Harvey*, 45 A.2d 780, 1946 D.C. App. LEXIS 106 (Cr.App. 1946).

Where owners of building, who had received from former landlord assignments in blank of various leases, directed that blanks be filled up in name of owners' building manager, thereby making him landlord, a judgment in a possessory action by manager against a tenant would be binding on owners. D.C. Code 1940, § 45-910. *Koehne v. Harvey*, 45 A.2d 780, 1946 D.C. App. LEXIS 106 (Cr.App. 1946).

Protective orders.

Landlord carried burden of demonstrating an

obvious need for such protection, in case in which protective order fixed deposit required from tenant at \$50 per month, where evidence disclosed at time of hearing that about one-third of the units in the 15-unit apartment building were vacant, and that landlord was financially unable to absorb an operating deficit that was more than \$3,300 and was still mounting. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Protective order requiring that tenant pay \$50 per month as a fixed deposit into registry of court, a reduction from monthly rental of \$72.50, would not be disturbed on basis of physical condition of the apartment, even though there were uncorrected infractions of the housing regulations, since the evidence did not show that the infractions were so severe as to completely negate tenant's rent obligation. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Burden of demonstrating need for protective order, which fixed deposit required from tenant at \$50 per month, a reduction from monthly rental of \$72.50, was on landlord, and such burden was not shifted to tenant when, in stating its conclusions, court observed that it would like to have heard tenant testify with regard to important purpose of a protective order, namely whether tenant could meet an obligation if and when the time came, and when court also voiced concern about lack of any evidence as to tenant's ability to pay at any time, since such statements could well have reflected court's legitimate desire to obtain maximum information bearing upon need for an order affording landlord security against possible future financial loss. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Where, but only where, the court can say with complete certainty that landlord will become entitled to a definite part of in-court fund in any event, and landlord demonstrates convincingly so dire a need for that part as to persuade the court to exercise its equitable powers to afford him some relief, the court may, to just that extent, respond favorably to the landlord's request for disbursement from deposited fund *pendente lite*; this rule contemplates that competing claims of parties will first be subjected to careful examination at a hearing after due notice, and that nonfrivolous claims of tenants to ultimate nonliability for any or all of deposited monies will be scrupulously honored. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Where tenant prevailed on issue of housing code violations and landlord on issue of repossession via notice to quit, case was substantially amenable to a landlord's protective order of some type pending the tenant's appeal of

judgment of possession. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

A landlord's protective order pending a tenant's appeal from a judgment of dispossession should be made only on motion of landlord, and only after notice and opportunity for a hearing on such a motion, including opportunity for oral argument and presentation of evidence by both parties. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

In fashioning a landlord's protective order pending a tenant's appeal from a judgment of dispossession, amount of rent specified in lease constitutes not only upper limit of deposit but also base from which reductions because of housing code infringements must be made. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

In appropriate situations trial judges may specify protective conditions as accompaniments of stays of eviction pending appeal. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Even though trial evidence, in suit by landlord for possession, may preclude a jury verdict favorable to a tenant's setoff against rent, that circumstance does not warrant a judge's failure to consider a sum less than stipulated rent as amount of protective order deposits. *Blanks v. Fowler*, 459 F.2d 1282, 1971 U.S. App. LEXIS 6817 (C.A.D.C. 1971).

Landlord's protective order, like injunction, is "an equitable remedy" and similarly circumscribed. *Cooks v. Fowler*, 437 F.2d 669, 1970 U.S. App. LEXIS 6439 (C.A.D.C. 1970).

If a tenant defends an action for possession on basis of breach of implied warranty of habitability, trial court may require tenant to make future rent payments into the registry of the court as they become due; generally, such escrowed moneys should be apportioned between the landlord and tenant after trial on basis of finding of rent actually due for period at issue. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1970 U.S. App. LEXIS 9377 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185, 1970 U.S. LEXIS 386 (1970).

If tenant in possessory action demands trial, future payments for use of premises become involved, and at hearing on landlord's motion for protective order, allegations of housing code violations would be relevant to trial court's determination of amount which should be paid monthly into registry of court pursuant to protective order, notwithstanding fact that defense of housing code violations is normally irrelevant to possessory action based upon valid 30-day notice to quit. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Court may enter order disbursing funds paid into registry of court pursuant to protective

order in contested possessory action only after holding hearing at which tenant has opportunity to present evidence as to, inter alia, extent to which rental contract figure should be abated, if at all, due to violations of housing regulations which might have existed during tenant's occupancy of premises while protective order was in effect. U.S. Const. Amend. 5. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Court order that \$105 which had been paid into registry of court pursuant to protective order in contested possessory action be disbursed to landlord was improper, where no evidentiary hearing was held. *McNeal v. Habib*, 346 A.2d 508, 1975 D.C. App. LEXIS 259 (1975).

Rent.

Although, in order to find that landlord was entitled to possession of premises for nonpayment of rent, court had to find that tenant owed landlord some rent, where court had only a collateral or incidental interest in any consideration of how much rent was due, and had no jurisdiction, in absence of personal service of process, to enter a judgment for landlord for amount of rent due, so that issue of rent is not genuinely before court, court could not be said to have "decided" question for purposes of raising a later estoppel, and tenant was not collaterally estopped from litigating issue of rent in subsequent action by landlord to recover rent. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

If a tenant is ready to yield possession that gives landlord all relief he sought in possessory action, it is neither good administration nor just to require that proceeding be delayed or protracted so as to litigate issue of rent; that issue should be litigated separately, and de novo, according to notice provided by law for personal actions for rent due. D.C. Code §§ 16-1501 to 16-1503, 45-910. *Tutt v. Doby*, 459 F.2d 1195, 1972 U.S. App. LEXIS 10717 (C.A.D.C. 1972).

Where part of tenant's rental obligation is suspended because of breach of implied warranty of habitability and part is found owing, no judgment for possession should issue if the tenant agrees to pay for partial rent found due; however, if the tenant refuses to pay such partial amount judgment for possession may then be entered. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1970 U.S. App. LEXIS 9377 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185, 1970 U.S. LEXIS 386 (1970).

Where tenants assert in their pleadings to a possessory action brought against them by a landlord that a rent increase is invalid, but have not challenged it before the rent adminis-

trator, the superior court may, in the exercise of its discretion, accord them a reasonable time to file such a challenge; if no such challenge has been brought before rent administrator by time set for trial, the superior court is not to undertake to adjudicate validity of rent increase. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

New owners, who prevailed in a suit for possession, were not entitled to a money judgment for past-due rent from occupants of the recently purchased premises, who were tenants of the former owner, since there was no contractual landlord-tenant relationship between owners and occupants which obligated occupants to pay rent or entitled owners to claim that rent was owed to them. D.C. Code 1981, § 45-1411. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

Tenant was guilty of a continuing willful violation of her tenancy, and her landlord was entitled to possession, where she consistently and willfully failed to pay her rent when due; the Rental Accommodations Act, properly construed, did not dictate a contrary result. D.C. Code §§ 45-1631 et seq., 45-1653(b), (b)(1). *Kaiser v. Rapley*, 380 A.2d 995, 1977 D.C. App. LEXIS 286 (1977).

Since tenant's failure to pay timely rent as required by her lease and her payment with checks not covered by sufficient funds in her bank account was willful, calculated and consistent, she was entitled to no equitable relief, notwithstanding the fact that, after the expiration date of the lease, she tendered all money owing. *Kaiser v. Rapley*, 380 A.2d 995, 1977 D.C. App. LEXIS 286 (1977).

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the landlord of his right to sue for possession for nonpayment of rent. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

A landlord who operates premises in violation of the housing regulations is not thereby enjoined from maintaining an action to recover possession for nonpayment of rent; rather, the landlord's breach of the warranty of habitability, as measured by substantial violations of the housing code, can be interposed by a tenant as a defense, in whole or in part, to the landlord's claim that possession should be surrendered because rent is owed; moreover, if any violations of the regulations arise after the commencement of the lease, they do not serve to void the lease and render it unenforceable. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dun-*

bar House, Inc., 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Lessee of office suite could not, on appeal from judgment for lessor in action for possession, assert that his failure to pay rent was justified on theory that lessor had breached its duty to protect suite because of alleged burglaries that had taken place, where lessee did not allege or proffer that lessor had reduced protective measures in force at time he entered into possession. *Dietz v. Miles Holding Corp.*, 277 A.2d 108, 1971 D.C. App. LEXIS 317 (1971).

A landlord could not dispossess tenant for nonpayment of rent and at the same time collect rent from tenant for period extending beyond time of filing of action. *Gunn v. Brown*, 59 A.2d 518, 1948 D.C. App. LEXIS 152 (Cr.App. 1948).

Repair of premises.

If landlord is unable to repair the premises, eviction would be permissible, but if landlord is able to repair premises another method is available to him for complying with requirements of section of housing code of District of Columbia prohibiting landlords from permitting occupancy of premises with code violations and, since retaliatory eviction would be unlawful, landlord must repair the premises. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

If landlord wishes to remove unit from market for some sound business reason he is free to do so but such a removal following a tenant's defense of substantial violations of housing code of District of Columbia in prior action to gain possession for rent due is as inherently destructive of tenant's rights as an ordinary eviction and landlord who fails to come forward with substantial business reason for removing unit from market, such as, for example, its financial inability to make the necessary repairs, may be presumed to have done so for an illicit retaliatory reason. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Landlord would not be able to evict tenant asserting retaliatory eviction defense so long as landlord was motivated by desire to rid itself of tenant who was not paying rent but if landlord came forward with a legitimate business justification it might be able to convince a jury that it was motivated by proper concern and if, for example, landlord brought premises up to standards of housing code of District of Columbia so that rent was again due and then evicted tenant for some unrelated, lawful reason, eviction would be permissible and, if landlord were to make convincing showing that it was for some reason impossible or unfeasible to make repairs, it would have legitimate reason for evicting the tenant and taking unit off the market. *Robinson v. Diamond Housing Corp.*, 463 F.2d

853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

In situations where landlord is unable to repair the premises he has legitimate business justification for taking the unit off the market and can meet his responsibility under section of housing code of District of Columbia prohibiting landlords from permitting occupancy of premises with code violations by evicting his tenant but in situations where landlord is able but unwilling to repair the premises he has by hypothesis made them uninhabitable and hence constructively deprived the tenant of possession and landlord may no more constructively evict a tenant for retaliatory purposes than he may actually so evict him and, if the tenant is entitled to possession, he is also entitled to have premises made habitable through a code enforcement action by housing authorities or proper suit by the tenant. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Retaliatory eviction.

Where tenant asserted retaliatory eviction defense to action for possession but had left premises, if as tenant claimed her departure was necessitated by landlord's continued failure to repair violations of housing code of District of Columbia, case would not be moot. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Where tenant asserted retaliatory eviction defense to action for possession after tenant had asserted violations of housing code of District of Columbia as defense to prior action for possession, if tenant was forced to leave premises when her own failure to provide heat caused all pipes in the building to freeze, controversy would be moot. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Landlord may go out of business entirely if it wishes to do so but its right to discontinue rental of all its units does not justify a partial closing designed to intimidate remaining tenants in connection with retaliatory eviction defense after a tenant's assertions of violations of housing code of District of Columbia. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

An eviction grounded on a desire to punish exercise by tenant of right to assert substantial violations of housing code of District of Columbia in defense to prior action to gain possession for rent due is plainly illegal, and its illicit status remains unchanged even if it is accompanied by withdrawal of unit from housing market. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

A tenant has right to remain in possession without paying rent when premises are burdened with substantial violations of housing code of District of Columbia making them unsafe and unsanitary, and landlord of such premises who evicts his tenant because he will not pay rent is in effect evicting him for asserting his legal right to refuse to pay rent and that reason will not support an eviction. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Retaliatory eviction defense after tenant's assertions of violations of housing code of District of Columbia deals with landlord's subjective state of mind, that is, with his motives, and if landlord's actions are motivated by desire to punish the tenant for exercising his rights or to chill the exercise of similar rights by other tenants, they are impermissible. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

A jury can judge a landlord's state of mind only by examining its objective manifestations and in connection with retaliatory eviction defense after tenant's assertions of violations of housing code of District of Columbia, when landlord's conduct is inherently destructive of tenants' rights or unavoidably chills their exercise, jury may under well recognized principles presume that landlord intended that result. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

An unexplained eviction following successful assertion of defense by tenant based on substantial violations of housing code of District of Columbia in prior action to gain possession for rent due falls within category of conduct inherently destructive of tenants' rights and gives rise to presumption that landlord intended that result and once the presumption is established it is then up to landlord to rebut it by demonstrating that he is motivated by some legitimate business purpose rather than by illicit motive which would otherwise be presumed and landlord's desire to remove a tenant who is not paying rent is not such a legitimate purpose. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Evidence raised question for jury as to whether eviction by serving 30-day notice to quit on tenant, who had asserted violations of housing code of District of Columbia as defense to a prior action for possession, was based on an illicit retaliatory motive on part of landlord. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Whether landlord's action in attempting eviction is retaliatory after tenant's assertions of violations of housing code of District of Columbia is a question of fact and court would not be

justified in taking it away from jury merely because it is "hard." *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

In view of private enforcement mechanism established by District of Columbia City Council depending in part on right of tenant to withhold rent when a unit is rendered unsafe and unsanitary by substantial housing code violations, legislature no more intended to permit retaliatory evictions as punishment for rent withholding than it intended to permit such evictions as punishment for reporting housing code violations and retaliatory motivation defense would be applicable where landlord seeks to evict by serving 30-day notice to quit on tenant at sufferance because she successfully set up housing code violations in a previous action for possession. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

In action for possession in which tenant asserted retaliatory eviction defense, where record was not complete, particularly as to precipitating cause of tenant's leaving the premises, trial court should be permitted to determine whether tenant's departure was caused by her own actions or by violations of housing code of District of Columbia, and if trial court finds that tenant voluntarily left the premises, it should vacate initial judgment thus leaving landlord in possession; if, on the other hand, it finds that code violations caused tenant's departure, it should set case for trial on issue of retaliatory eviction and jury's evaluation of that defense will then determine question of legal possession. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

While inability to repair is a legitimate business reason which would justify removing housing unit from market, even that allegation is not sufficient to justify summary judgment over retaliatory eviction defense after tenant's assertions of violations of housing code of District of Columbia, and landlord's mere allegation that it was removing unit from market because it could not afford to make repairs did not mean that jury would find that it was in fact unable to make the necessary repairs and further mere existence of legitimate reason for landlord's actions would not help it if jury found that it was in fact motivated by some illegitimate reason. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Retaliatory eviction defense would not be extended to commercial leases, although commercial tenant claimed that landlord dramatically increased rent in retaliation for tenant's assistance to residential tenants in same building in pursuing housing violation complaints and commercial tenant's own numerous writ-

ten and oral complaints about damages and deficiencies in building structure; there are fundamental differences between enforcement role played by commercial tenants as opposed to residential tenants, and commercial tenant failed to adduce any evidence indicating commercial analog of appalling condition and shortages and inequality of bargaining power between tenant and landlord. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

Right to interpose retaliatory eviction defense based on breach of warrant of habitability would not be extended to commercial tenant; commercial tenants and landlords are more likely to have equal bargaining power, and commercial tenant will presumably have sufficient interest in demised premises to make needed repairs and means to make needed repairs himself or herself if necessary and then sue landlord for damages. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

Independent cause of action may not be maintained by tenant against landlord based on unsuccessful retaliatory eviction suit; courts recognize retaliatory eviction only as valid defense to landlord's action for possession. *Weisman v. Middleton*, 390 A.2d 996, 1978 D.C. App. LEXIS 553 (1978).

Review.

As rent contracted for, \$72.50 per month, represented apartment's occupancy value if it fully complied with housing regulations, as one-third of \$72.50 represented shelter in narrowest sense and remaining two-thirds reflected qualitative improvements required by regulations, and as the apartment's condition violated those regulations in a number of respects, order staying eviction of tenant-appellant pending resolution of her appeal to review protective order entered in favor of landlord by court of general sessions would be conditioned on tenant's making monthly security deposits of \$48.34, representing apartment's "as-is" occupancy value (one-third of base rent for providing shelter and one-half of remaining two-thirds for qualitative factors). *Cooks v. Fowler*, 455 F.2d 1281, 1971 U.S. App. LEXIS 12432 (C.A.D.C. 1971).

Until District of Columbia Court of Appeals had acted on merits of landlord's possessory action, there was no occasion for review in United States Court of Appeals for District of Columbia of any issue encompassed thereby. *Cooks v. Fowler*, 437 F.2d 669, 1970 U.S. App. LEXIS 6439 (C.A.D.C. 1970).

Where court of general sessions conditioned stay pending appeal of judgment for landlord for possession upon tenant's paying into court registry monthly a sum equal to rent that would have accrued under lease, order of the

District of Columbia Court of Appeals denying relief from the protective order was appealable to tender for decision by United States Court of Appeals for District of Columbia the issue over propriety of the protective order. *Cooks v. Fowler*, 437 F.2d 669, 1970 U.S. App. LEXIS 6439 (C.A.D.C. 1970).

Pending decision of United States Court of Appeals for the District of Columbia of appeal centering on protective order issued in litigation between landlord and tenant, tenant's motion for stay of eviction would be granted, where there was probability of tenant's success, and balance of hardship clearly favored tenant. *Cooks v. Fowler*, 437 F.2d 669, 1970 U.S. App. LEXIS 6439 (C.A.D.C. 1970).

Where jury had found that landlord's action for possession for nonpayment of rent must fail because of substantial housing code violations but jury still granted possession in landlord's action based on notice to quit, United States Court of Appeals for District of Columbia would grant petition for allowance of appeal from order of District of Columbia Court of Appeals denying stay of protective order entered by court of general sessions and would stay eviction pending its decision but stay would be conditioned on tenant's making monthly payments to registry of court of general sessions in amount to be determined by the Court. *Cooks v. Fowler*, 437 F.2d 669, 1970 U.S. App. LEXIS 6439 (C.A.D.C. 1970).

Appeals taken by tenants from rulings entered in possessory actions by landlord for nonpayment of rent were not rendered moot by the fact that the tenants had vacated their apartments, since the issue on appeal was whether the failure to have the required license and certificate precluded the landlord's action for possession in the first instance, and since the tenants' continuing interest in the appeal lay in the fact that, prior to voluntarily surrendering possession of their respective apartments, they paid the rent arrearages to the landlord in order to avoid immediate eviction. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Inasmuch as landlord sold apartment building during pendency of tenant's appeal from eviction order, and landlord could no longer put tenant back into possession, case was moot. *Spingarn v. Landow & Co.*, 342 A.2d 41, 1975 D.C. App. LEXIS 425 (1975).

Where occupant, who vacated apartment under threat of eviction, had occupied apartment as a permissive user or licensee, occupant left as trespasser and took with her no right of reentry; thus, occupant's appeal from refusal to vacate default judgment for owner for possession of apartment had been rendered moot. *Smith v. Town Center Management Corp.*, 329 A.2d 779, 1974 D.C. App. LEXIS 327 (1974).

Self-help.

Transient-accommodation provider could uti-

lize self-help as alternative means of evicting roomer for non-payment of weekly occupancy charge; provider was not required to pursue judicial possessory action. *Harkins v. Win Corp.*, 771 A.2d 1025, 2001 D.C. App. LEXIS 101 (2001), modified and rehearing denied by 777 A.2d 800, 2001 D.C. App. LEXIS 166 (D.C. 2001).

Landlord's common-law right to self-help eviction was abrogated by statute. D.C. Code 1981, §§ 45-2501 to 45-2594. *Camacho v. 1440 Rhode Island Ave. Corp.*, 620 A.2d 242, 1993 D.C. App. LEXIS 26 (1993).

Legislatively created remedies for reacquiring possession are exclusive in their application to commercial tenancies as well as residential tenancies, and landlord's common-law right of self-help no longer exists. D.C. Code 1981, §§ 16-1501, 45-1410. *Simpson v. Lee*, 499 A.2d 889, 1985 D.C. App. LEXIS 521 (1985).

Right-to-enter provision in lease did not relieve lessor of obligation to comply with statutory remedies [D.C. Code 1981, §§ 16-1501, 45-1410], where resident discontinued rent payments due to former lessee's claim to premises. *Simpson v. Lee*, 499 A.2d 889, 1985 D.C. App. LEXIS 521 (1985).

Decision abolishing previously recognized right of landlords to use self-help eviction remedy would be given partial retroactive effect, i.e., would be applied to instant parties, as well as prospective application. (Per Mack, A. J., with four Judges concurring.) D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

One motivation for providing summary possessory action for landlord was to avoid resort to self-help and force, condoned at common law. D.C. Code §§ 16-1501, 45-910. *Mendes v. Johnson*, 389 A.2d 781, 1978 D.C. App. LEXIS 544 (1978).

Surrender of possession of premises.

A tenant's voluntary relinquishment of possession ends case or controversy when landlord makes no claim for back rent. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Landlord should not be held responsible for tenant's misconduct and a tenant who makes her own apartment uninhabitable can be taken as having voluntarily surrendered possession, thus mooting out the controversy. *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 1972 U.S. App. LEXIS 10344 (C.A.D.C. 1972).

Where counsel for both parties in landlord's possessory actions represented to trial court when cases were called for trial that the tenants had vacated the premises sometime during the eight-month period between the filing of complaints and trial date, cases had become moot since no controversy remained between the parties. D.C. Code General Sessions Court

Rules, § 2, rule 3. *Atkins v. United States*, 283 A.2d 204, 1971 D.C. App. LEXIS 228 (1971).

Merely because tenants moved for summary judgment in landlord's actions for possession, they were not estopped from having the action subsequently declared moot on ground that tenants had vacated premises. *Atkins v. United States*, 283 A.2d 204, 1971 D.C. App. LEXIS 228 (1971).

Where lessee moved out of leased office suite, and no writ of restitution was issued or threat of eviction was made by lessor, action by lessor against such lessee for possession of office suite for failure to pay rent became moot. *Dietz v. Miles Holding Corp.*, 277 A.2d 108, 1971 D.C. App. LEXIS 317 (1971).

Waiver of covenants.

In action by landlord for possession of leased

apartment, tenant's testimony that prior to execution of lease, the landlord through its agent knew that tenant intended keeping dog on premises and assured tenant that it would be all right, that from beginning of tenancy and for nearly five years dog was kept on premises with knowledge of landlord who without objection accepted rent during that time, raised issue for jury of whether landlord had waived covenant in lease against keeping animals in apartment. *Stewart v. Shannon & Luchs Co.*, 46 A.2d 863, 1946 D.C. App. LEXIS 123 (Cr.App. 1946).

§ 42-3211. Action in ejectment — Claims for arrears of rent, double rent, and waste; jurisdiction of court; money judgment.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste; provided, that in such action before the Superior Court of the District of Columbia the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste.

(Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Possessory actions, 1973 Ed., § 45-911.
see § 16-1501 et seq.

Prior Codifications. — 1981 Ed., § 45-1411.

CASE NOTES

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Actions.

Assumpsit is the proper form of action by a landlord to recover damages for a tenant's

breach of lease for nonpayment of rent, where, the landlord having relet the premises, the tenant did not object to the rate of the rental reserved on the reletting; and it is not necessary to sue in covenant, though the lease is under seal. *Slayton v. Jordan*, 42 App.D.C. 421, 1914 U.S. App. LEXIS 2304 (1914).

In an action for two months' unpaid rent due in advance on the 20th day of each month, where the defense is a surrender of the demised premises and acceptance of such surrender during the first month after the rent day, under an agreement that no rent should be paid while the demised premises were being remodeled, evidence is admissible showing that, before the execution of the lease, the lessor had promised that no rent should be charged during the process of remodeling, and that after the surrender and before the expiration of the term lumber had been stored upon the premises. *Okie v. Person*, 23 App.D.C. 170, 1904 U.S. App. LEXIS 5242 (1904).

Evidence that lessee and lessor agreed to monthly rental of \$3400, that lessee tendered checks every month to lessor for \$3400, that lessor claimed \$3400 per month as rental income on its federal income tax returns, and that lessee understood that this was agreed upon rent was sufficient for jury to conclude that lessee agreed to pay lessor \$3400 per month in rent, paid such rent, and thus did not owe lessor back rent. *R & A, Inc. v. Kozy Korner*, 672 A.2d 1062, 1996 D.C. App. LEXIS 23 (1996).

Landlord offered sufficient evidence to support \$2,500,000 verdict in his favor on nonpayment of rent claim given terms of lease, which was in evidence, landlord's two witnesses on damages, and trial court's very general jury instructions on counterclaim to which tenant did not object. *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

In view of lack of any indication that tenants were in any way prejudiced in their defense of landlords' claim for rent by landlords' discovery delays, trial court abused its discretion in striking landlords' complaint as sanction for such delays. D.C. Code SCR, Civil Rule 37(b); Fed. Rules Crim. Proc. rule 48(b), 18 U.S.C. Pollock v. Brown, 395 A.2d 50, 1978 D.C. App. LEXIS 358 (1978).

Although lease term had two more months to run when landlord instituted suit for possession and for rent in arrears, under circumstances, including facts that one month's rent had then accrued and had not been paid, that by time of trial the rent due for final month of term had accrued and remained unpaid, and that damages had not been reduced by rerenting, action was not subject to dismissal as premature. *Satin v. Buckley*, 246 A.2d 778, 1968 D.C. App. LEXIS 212 (App. 1968).

Evidence in landlord's suit for double rent supported finding that tenants had not refused to surrender possession without reasonable excuse in accordance with notice to quit. D.C. Code 1961, § 45-907. *Paton v. Rose*, 205 A.2d 609, 1964 D.C. App. LEXIS 175 (App. 1964).

Evidence supported determination that checkroom operator was indebted to checkroom owner for unpaid installments of rent. *V. E. M. Hotel Service, Inc. v. Uline, Inc.*, 190 A.2d 812, 1963 D.C. App. LEXIS 227 (App. 1963).

Where lease provided that termination for default should not relieve tenants of liability and that any loss of rent at option of a landlord could be recovered by him in separate actions from time to time as tenants' obligation to pay rent would have accrued if term had been continued, after tenant defaulted and surrendered premises which could not be re-rented, landlord's action to recover rent before expiration of lease term was not premature. *Sanders v. Kahn*, 134 A.2d 107, 1957 D.C. App. LEXIS 258 (Cr.App. 1957).

Where hold-over tenant under a month's lease did not pay rent when due and landlord brought suit for possession and two days later tenant vacated premises and paid rent due up to time he vacated premises, landlord could not subsequently bring suit for one month's rent on ground that tenant failed to give 30-day notice. *Ryon v. Ortiz*, 131 A.2d 925, 1957 D.C. App. LEXIS 234 (Cr.App. 1957).

Under lease covenant providing that if landlord re-enters by process of law for default of tenants, tenants are liable for any deficiency or loss of rent, and authorizing landlord to re-let premises at tenants' risk, landlord's action for loss or deficiency of rent is premature if brought before end of term, since extent of loss or deficiency may not be determined until such time. *McIntosh v. Gitomer*, 120 A.2d 205, 1956 D.C. App. LEXIS 176 (Cr.App. 1956).

In action by landlord against former tenant of rooming house property for rent for period from January 1954 through January 1955, evidence was sufficient to sustain the trial court's finding that tenant's responsibility for rent ceased in March, 1954. *Elliott v. Crawford*, 118 A.2d 518, 1955 D.C. App. LEXIS 228 (Cr.App. 1955).

In action by landlord for nonpayment of rent against tenant who relied on provision which conditioned lease on tenant's obtaining an occupancy permit for conduct of his business on leased premises, evidence sustained court's finding that tenant's business had not changed between time of execution of lease and time tenant sought to reoccupy premises on termination of sublease. *Weingarden v. Hughes*, 108 A.2d 157, 1954 D.C. App. LEXIS 182 (Cr.App. 1954).

Entry of judgment for tenant in landlord's action against tenant for a non-payment of rent

was wrong where defendant had admittedly paid no rent for a particular month. D.C. Code 1951, § 45-1611. *Kelley v. Hinnant*, 97 A.2d 339, 1953 D.C. App. LEXIS 143 (Cr.App. 1953).

In action for recovery of rent of leased premises, evidence was sufficient to support finding that landlord had not represented that the building would house tenant's heavy paper cutter. *Soresi v. Repetti*, 76 A.2d 585, 1950 D.C. App. LEXIS 182 (Cr.App. 1950).

In action for possession of real property based on nonpayment of rent, defendant had right to defeat action by tendering the rent at the hearing. *Crowder v. Lackey*, 46 A.2d 699, 1946 D.C. App. LEXIS 118 (Cr.App. 1946).

In action for possession of real property based on nonpayment of rent, dismissal on plaintiff's motion, of prior action for possession of the same premises but involving rent for shorter period was not error. *Crowder v. Lackey*, 46 A.2d 699, 1946 D.C. App. LEXIS 118 (Cr.App. 1946).

Attorney fees and costs.

Landlord reasonably complied with lease provision requiring written notice to tenant of attorney and expert witness fees which it sought to recover as additional rent in connection with litigation under the lease, though landlord did not provide notice by certified or registered mail pursuant to an additional provision of the lease, where written notice was provided by service of process and subsequent filings in the litigation against the tenant; court would not concern itself with the trifle of requiring certified or registered letter notice of that which had been long known to all parties. *LJC Corp. v. Boyle*, 768 F.2d 1489, 1985 U.S. App. LEXIS 20782 (C.A.D.C. 1985).

Under lease requiring tenant to pay as additional rent attorney and expert witness fees which landlord was compelled to pay or incur, landlord was not required to actually pay bills submitted by its counsel and experts before tenant could be liable for those fees. *LJC Corp. v. Boyle*, 768 F.2d 1489, 1985 U.S. App. LEXIS 20782 (C.A.D.C. 1985).

Lease provision holding tenant liable for cost of legal counsel retained by landlord to obtain payment of rent was not an indemnity agreement and did not require showing that landlord had paid, been billed or agreed to pay any legal fees, but even if it could be construed as an indemnity agreement, testimony at posttrial hearing by landlord's attorney regarding his fees in suit to recover unpaid rent from tenant was ample to satisfy the requisite for recovery—a showing that landlord was obligated to pay. *Simons v. Federal Bar Bldg. Corp.*, 275 A.2d 545, 1971 D.C. App. LEXIS 293 (1971).

Clause in lease holding tenant liable for cost of legal counsel retained by landlord to obtain payment of rent or damages for breach of lease

provision was not unreasonable or unfair in light of commercial exigencies facing landlord of office building, and clause was valid as to tenant who was an attorney who had signed lease after a considerable period of negotiations. *Simons v. Federal Bar Bldg. Corp.*, 275 A.2d 545, 1971 D.C. App. LEXIS 293 (1971).

When lease for term of two months contained provision allowing landlord attorney's fee in action against tenant for rent that provision was applicable to holding-over tenancy. *Williams v. Tencher-Walker, Inc.*, 125 A.2d 58, 1956 D.C. App. LEXIS 221 (Cr.App. 1956).

In action by landlord against holding over tenant for rent, amount of attorneys' fees to be awarded landlord under lease rested in sound discretion of trial court. *Williams v. Tencher-Walker, Inc.*, 125 A.2d 58, 1956 D.C. App. LEXIS 221 (Cr.App. 1956).

Where landlord in his suit for possession of leased premises on ground of nonpayment of rent made no claim in his complaint for a money judgment, trial court was justified in denying landlord's claim for attorney's fee pursuant to provision in lease. D.C. Code 1940, §§ 11-735, 45-911. *Shipley v. Major*, 44 A.2d 540, 1945 D.C. App. LEXIS 130 (Cr.App. 1945).

Attorney's fees were not taxable as costs in landlord's action to recover possession of leased premises on ground of nonpayment of rent. D.C. Code 1940, §§ 11-735, 45-911. *Shipley v. Major*, 44 A.2d 540, 1945 D.C. App. LEXIS 130 (Cr.App. 1945).

Counterclaim by tenant.

Under District of Columbia law, where landlord succeeds in reletting premises for higher rent than was payable under original lease, breaching tenant may credit that surplus against its rent obligations for period before substitute lease was signed. *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

In action by landlord seeking possession of commercial premises and back rent in landlord and tenant branch, tenant was not entitled to assert counterclaim alleging breach of contract by landlord where claim was not based upon a payment or credit against rent. *Landlord and Tenant Rule 5(b)*. *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

Damages.

Landlord was not entitled to damages for tenant's breach of commercial lease agreement that occurred due to tenant's failure to restore premises after lease expired, under economic waste theory, as rental value of premises had increased due to alterations made to premises by tenant in connection with its operation of facility as a correctional facility pursuant to its contract with the Bureau of Prisons (BOP), and

landlord had suffered no damages, in that it had not performed any restorations on its own, nor would it, given that current configuration of premises as a homeless shelter depended entirely on keeping tenant's alteration intact. *Bannum, Inc. v. 2210 Adams Place, N.E., LLC*, 4 A.3d 431, 2010 D.C. App. LEXIS 509 (2010).

Landlord was not entitled to damages from tenant who clearly breached lease where lost rents were fully offset by revenues under substitute lease, even though substitute lease to new tenant included additional space. *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

The measure of damages for a tenant's breach of lease for nonpayment of rent, where the landlord re-entered and relet the premises at a rental which, though less than that stipulated in the original lease, is fair and reasonable, is the difference between the rent called for by the two leases. *Slayton v. Jordan*, 42 App.D.C. 421, 1914 U.S. App. LEXIS 2304 (1914).

In an action for use and occupation, the plaintiff can recover only for the time of the actual occupation, although there be a parol lease for a whole year at a certain rent, and the tenant voluntarily quits the premises during the year. The parol demise is only evidence, in such an action, of the rate at which the defendant is to be charged for the time of actual occupation. *Carroll v. Finnagan & Waters*, 5 F.Cas. 162, 1804 U.S. App. LEXIS 267 (1804).

Landlords clearly accepted surrender of leased property when they reentered property after tenant abandoned it, erected a sign, and actively sought to relet the premises; thus, they were not entitled to recover for rent due from date of abandonment until date of reletting, but were limited to damages for breach of contract. *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1984 D.C. App. LEXIS 564 (1984).

Where landlords accepted tenant's surrender of leased property and re-leased to a new tenant for a monthly rental sufficiently greater than that of original lease that it allowed landlord to recoup any loss of rent from period that the property was unoccupied, landlords suffered no damages. *Civil Rule 52. Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1984 D.C. App. LEXIS 564 (1984).

Even if landlords could treat action of tenants as total breach of lease and sue for damages for such breach, they were not compelled to do so but could sue for rent as it accrued. *Cohen v. Food Town, Inc.*, 207 A.2d 122, 1965 D.C. App. LEXIS 155 (App. 1965).

Defenses.

In lessor's suit for three months' hotel rent, evidence held to sustain judgment against lessee who defended on ground of assignment of lease to corporation before three-month period.

Smith v. Pickford, 85 F.2d 705, 1936 U.S. App. LEXIS 4228 (1936).

In an action for unpaid rent, where the defense is eviction from a portion of the demised premises, a plea of set-off, claiming "damage accruing to defendant for breach of the covenant for quiet enjoyment and amount due for use and occupation by plaintiff of demised premises," is broad enough to cover any damage accruing from the eviction, especially in a suit instituted before a justice of the peace, by whom the decision is required to be, not in accordance with legal principles alone, but in accordance "with the equity and right of the matter." Code, § 80. *Okie v. Person*, 23 App.D.C. 170, 1904 U.S. App. LEXIS 5242 (1904).

Where the defense to an action for two months' unpaid rent due in advance on the 20th day of each month is a surrender of the demised premises during the first month, after the rent day, and acceptance of such surrender, evidence that lumber had been stored on the demised premises prior to the 20th day of the second month is admissible as tending to discharge the liability of defendant for rent due during the second month. *Okie v. Person*, 23 App.D.C. 170, 1904 U.S. App. LEXIS 5242 (1904).

Affidavit of defense alleging plaintiff's eviction by landlord presents sufficient defense to action for rent as eviction is not merely conclusion of law, but term used to express act of dispossession, as well as result thereof and used in such affidavit must be taken in sense in which it would be effectual rather than in sense in which it would be meaningless and unavailing. *The Richmond v. Cake*, 1 App.D.C. 447, 1893 U.S. App. LEXIS 3057 (1893).

Affidavit of defense stating that defendant in landlord's action for rent is "informed and believes" that he was evicted by persons acting under plaintiff's instructions and expects so to prove at trial is sufficient. *The Richmond v. Cake*, 1 App.D.C. 447, 1893 U.S. App. LEXIS 3057 (1893).

Allegation in tenant's answer that landlord fraudulently induced him to enter into lease was assertion of recoupment defense, so that landlord was not barred from seeking money judgment for rent in arrears by his failure to personally serve tenant with summons and complaint; tenant was asking court to look beyond nonpayment of rent to examine entire transaction with landlord and to enter judgment that would do justice in view of transaction as a whole. *Landlord and Tenant Rule 3. Lofchie v. Washington Square Ltd. Partnership*, 580 A.2d 665, 1990 D.C. App. LEXIS 234 (1990).

Tenant's activities were not inconsistent with pretrial order and trial court did not err in permitting tenant to interpose "no damages" defense after pretrial statements had been filed

in action to recover unpaid rent and for breach of contract where pretrial order provided that tenant could submit, on day of trial, memorandum delineating "any special legal matters." *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1984 D.C. App. LEXIS 564 (1984).

Tenant sued for rent had burden to establish his defense of constructive eviction by title paramount. *Reamer v. Blumenthal*, 154 A.2d 364, 1959 D.C. App. LEXIS 301 (Cr.App. 1959).

In landlord's action against tenant for rent, evidence tending to show that a portion of the leased premises was public property, i.e., property of the District of Columbia, and that after tenant had vacated, the landlord had been convicted of occupying public space without a license, was insufficient to prove tenant's defense of constructive eviction by title paramount; the most that such evidence could prove was that a title paramount existed. *Reamer v. Blumenthal*, 154 A.2d 364, 1959 D.C. App. LEXIS 301 (Cr.App. 1959).

In landlord's action to recover rent from tenant whose defense was constructive eviction by title paramount, it was not necessary that tenant prove that he was actually expelled; however, it was necessary that he show a yielding to a hostile assertion of paramount title by one entitled to present possession. *Reamer v. Blumenthal*, 154 A.2d 364, 1959 D.C. App. LEXIS 301 (Cr.App. 1959).

What is a reasonable time within which to move after constructive eviction is ordinarily a question of fact; and in action for recovery of rent, evidence sustained finding that tenants had waived defense of constructive eviction by failing to move from premises for a year after being notified of their inability to legally use property as used car lot. *Goldsmith v. Gisler*, 150 A.2d 462, 1959 D.C. App. LEXIS 247 (Cr.App. 1959).

Whether lessee abandoned premises within a reasonable time and hence did not waive defense of constructive eviction in action for rent was for jury under evidence of lessee's reliance on lessor's promises to repair leaking roof and evidence of continuous repairs to the roof. *Ackerhalt v. Smith*, 141 A.2d 187, 1958 D.C. App. LEXIS 234 (Cr.App. 1958).

Where lessee cannot take possession of a part of the premises because of a prior lease to another, he may refuse to take possession and bring an action for damages, or may accept possession of remainder, pay the entire rent, and bring an action for damages, or he may accept possession of remainder and when suit is brought for rent due, or for possession for nonpayment of rent, may defend on ground that he does not owe all the rent claimed. *Lalekos v. Manset*, 47 A.2d 617, 1946 D.C. App. LEXIS 141 (Cr.App. 1946).

A lessee in a lease which is a nullity as to the owner is not estopped when sued for rent to rely

on the invalidity of the lease. *Stott v. Rutherford*, 8 D.C. 7 (D.C.Sup. 1873).

Evidence.

Evidence did not show landlord and tenant reached an agreement regarding rent due, and thus, landlord's cashing of check tendered by tenant did not constitute accord and satisfaction; check contained notation "1st pay," indicating the payment was the first of more than one payment, landlord did not sign cover letter beneath statement asking for landlord's signature if the letter reflected "our agreement and settlement," and further negotiations ensued after landlord's receipt of check and cover letter. *So v. 514 10th St. Assocs., L.P.*, 834 A.2d 910, 2003 D.C. App. LEXIS 634 (2003).

In general.

Run-of-the-mill state law claims such as unpaid rent, failure to pay creditors, or even torts committed by ERISA plan are not subject to ERISA preemption. Employee Retirement Income Security Act of 1974, § 514(a), (b)(2)(A), 29 U.S.C. § 1144(a), (b)(2)(A). *Edelen v. Osterman*, 943 F. Supp. 75, 1996 U.S. Dist. LEXIS 16597 (1996).

Landlord has three options for dealing with tenants who wrongfully abandon premises and repudiate their leases: landlord can accept abandonment and thereby terminate the lease; landlord can, without acquiescing in abandonment, reenter and relet and hold tenants for any deficiency in rent; or landlord can refuse to reenter, allow premises to remain vacant, and hold tenants for full rent. *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1984 D.C. App. LEXIS 564 (1984).

In landlord's action for rent, whether there was a rescission of contract for purchase of leased premises was a factual question. *Beck v. Troiano*, 138 A.2d 492, 1958 D.C. App. LEXIS 218 (Cr.App. 1958).

Interest on rent arrears.

Interest is recoverable on a debt for rent only from the time of a demand. *Wise's Ex'r v. Ressler*, 30 F.Cas. 388, 1820 U.S. App. LEXIS 274 (1820).

Interest held not recoverable in covenant and in debt on arrears of rent from the time it became due. *Gill v. Patton*, 10 F.Cas. 379, 1804 U.S. App. LEXIS 364 (1804).

Joinder of claims.

Under District of Columbia Code providing that landlord may join with his claim for recovery of possession of leased premises a claim for arrears for rent, recovery of money judgment is incidental to basic action for possession, the two claims are separate and distinct, and landlord is not required to join claims, but may sue for rent in separate action. D.C. Code 1951, § 11-735, as amended by Act July 18, 1953, 67

Stat. 66; §§ 11-736, 45-910, 45-911. *Paregol v. Smith*, 103 A.2d 576, 1954 D.C. App. LEXIS 239 (Cr.App. 1954).

Under District of Columbia Code providing that landlord may join with claim for recovery of possession of leased premises a claim for arrears of rent, claim for rent may be joined only when possessory action is commenced, and if omitted may not thereafter be added in that suit. D.C. Code 1951, § 11-735, as amended by Act July 18, 1953, 67 Stat. 66; §§ 11-736, 45-910, 45-911; Rules of Municipal Court for District of Columbia, Landlord and Tenant Branch, rule 4(c). *Paregol v. Smith*, 103 A.2d 576, 1954 D.C. App. LEXIS 239 (Cr.App. 1954).

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main action, which remains basically one for possession. D.C. Code 1940, §§ 11-735, 45-911. *Shipley v. Major*, 44 A.2d 540, 1945 D.C. App. LEXIS 130 (Cr.App. 1945).

The words "at the same time" in this section do not allow a plaintiff to return to court 4 months after receiving a judgment for possession to obtain a money judgment. *The Most Worshipful Prince Hall Grand Lodge, Inc. v. Moncue*, 122 WLR 61 (Super. Ct. 1993).

Jurisdiction of court.

If landlord does not join claim for recovery of premises in an action seeking damages for arrears in rent, action would not be assigned to landlord and tenant branch, since its primary function is to conduct summary proceedings for possession. Landlord and Tenant Rule 1. *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

Landlord and tenant branch was not deprived of jurisdiction to enter an order for damages for back rent sought by landlord, even though tenant surrendered possession after landlord brought action seeking possession and damages, and though action only seeking money damages would not have been assigned to landlord and tenant branch, since claim could not be defeated by voluntary act of tenant which satisfied only portion of relief sought. Landlord and Tenant Rule 1. *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

Landlord and tenant branch was not required to transfer action to civil division, when tenant had surrendered premises, so that only remaining issue was landlord's claim for monetary relief, since to have referred motion for summary judgment brought by landlord to another branch would have been a waste of judicial resources. *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

When commercial property is involved, mere fact that counterclaim is related to premises

does not permit such matter to be raised in landlord and tenant branch unless based upon payment or credit against rent. Landlord and Tenant Rule 5(b). *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

Liability for rent.

Where landlord obtained judgment for possession of the premises, it thereby terminated the leasehold and any obligation to pay rent. *BDC Capital Props., L.L.C. v. Quan Trinh*, 307 F.Supp.2d 12, 2004 U.S. Dist. LEXIS 3525 (2004).

New owners, who prevailed in a suit for possession, were not entitled to a money judgment for past-due rent from occupants of the recently purchased premises, who were tenants of the former owner, since there was no contractual landlord-tenant relationship between owners and occupants which obligated occupants to pay rent or entitled owners to claim that rent was owed to them. D.C. Code 1981, § 45-1411. *Nicholas v. Howard*, 459 A.2d 1039, 1983 D.C. App. LEXIS 360 (1983).

Generally, question of the existence of housing violations and their effect on habitability and the tenant's liability for rent is one of fact to be submitted to the trier thereof. *Reese v. Diamond Housing Corp.*, 259 A.2d 112, 1969 D.C. App. LEXIS 358 (App. 1969).

Tenant who did not prove that housing violations existed because of landlord's neglect or refusal to make repairs or that violations made the house unhealthy or unsafe, or the extent to which violations offset his liability under lease, was not relieved of liability to pay rent. D.C. Code General Sessions Court Rules, § 2, rule 4(c). *Jones v. Sheetz*, 242 A.2d 208, 1968 D.C. App. LEXIS 158 (App. 1968).

Whether failure of tenant who had closed his business to remove plumbing and trade fixtures constituted a holding over by tenant so as to render him liable for rent was a question of fact. *Beck v. Troiano*, 138 A.2d 492, 1958 D.C. App. LEXIS 218 (Cr.App. 1958).

Rent as it fell due became a debt which tenant was bound to pay unless the parties entered into a contrary agreement supported by consideration. *Crowder v. Lackey*, 46 A.2d 699, 1946 D.C. App. LEXIS 118 (Cr.App. 1946).

Mitigation of damages.

Failure of landlord to mitigate damages is affirmative defense and tenant has burden of showing absence of reasonable efforts to mitigate. *Norris v. Green*, 656 A.2d 282, 1995 D.C. App. LEXIS 61 (1995).

Commercial tenant's cross-examination challenge to landlord's posteviction actions to mitigate damages failed to establish that landlord's acts of placing signs in window were unreasonable and, thus, tenant failed to establish land-

lord's failure to mitigate damages as defense to suit for rent. *Norris v. Green*, 656 A.2d 282, 1995 D.C. App. LEXIS 61 (1995).

Landlords suffered no prejudice from tenant's "no damages" defense interposed after pretrial statements had been filed and could not claim that they were unfairly surprised in urging their position in trial court where landlords supplied tenant with information about new lease, and tenant's pretrial statement referred to fact that if landlords had properly relet property, damages could have been completely mitigated. *Truitt v. Evangel Temple, Inc.*, 486 A.2d 1169, 1984 D.C. App. LEXIS 564 (1984).

Parties.

Action for rent against tenant could not be dismissed for want of indispensable parties, namely, the other tenants, since tenants were jointly liable for the rent and could be sued either jointly or separately. D.C. Code § 16-2101. *Ostrow v. Smulkin*, 249 A.2d 520, 1969 D.C. App. LEXIS 198 (App. 1969).

Lessor's attorney in fact who was to receive 5% of all rentals paid during full term of lease as his commission had no legal title in claim for unpaid rent under lease, and consequently was not the real party in interest, and had no right to sue thereon. *Rules of Municipal Court, Civil Division*, rule 17(a). *Capital Linoleum Co. v. Savage*, 91 A.2d 564, 1952 D.C. App. LEXIS 213 (Cr.App. 1952).

Where wife rented premises as a home for her husband and herself, and both husband and wife paid rent, both husband and wife were proper plaintiffs in action for double overcharge of rent, notwithstanding wife alone signed rental agreement. D.C. Code 1940, § 45-1601 et seq. *Santucci v. Mancuso*, 78 A.2d 671, 1951 D.C. App. LEXIS 131 (Cr.App. 1951).

Where directors of association which occupied premises for a time had leased such premises from owners and had thereafter rented the property to defendant, directors were entitled to maintain suit for rent, and association was not an "indispensable party" notwithstanding that payments of rent found their way into association's account. *Werth v. Nolan*, 32 A.2d 386, 1943 D.C. App. LEXIS 163 (Cr.App. 1943).

In suit for rent, evidence established that defendant, and not corporation with which he had some connection, was personally liable for the rent. *Werth v. Nolan*, 32 A.2d 386, 1943 D.C. App. LEXIS 163 (Cr.App. 1943).

A receiver was appointed to receive rents pending litigation between a market company and its tenants. One tenant failed to pay rent, and abandoned his stall. The decree conferred on the receivers no authority to relet in such case. The market company let the abandoned stall to a new tenant. Held, a suit against the latter tenant for rent should be maintained by

the company rather than by the receiver. *Washington Market Co. v. Warthen Bros.*, 13 D.C. 432 (D.C.Sup. 1883).

Pleading.

To an action of covenant for rent against a subtenant, defendant cannot plead that his lessor had not paid the rent, according to his covenant, to the original landlord. *Gill v. Patton*, 10 F.Cas. 378, 1803 U.S. App. LEXIS 309 (1803).

In view of narrow wording of landlord's complaint for rent arrearages, landlord was limited to recovering such monthly rents as fell due within period set forth specifically in complaint. *Novak v. Cox*, 538 A.2d 747, 1988 D.C. App. LEXIS 52 (1988).

Sublessor was not entitled to judgment for possession and rent due on premises on basis of verified complaint or alleged sublessees' attorneys' failure to oppose entry of judgment, as alleged sublessees were not required to and did not file answer to sublessor's complaint, trial court did not refer to verified complaint or any evidence as proof of alleged sublessees' liability and verified complaint was set forth in conclusory fashion. *Jones v. Health Resources Corp.*, 509 A.2d 1140, 1986 D.C. App. LEXIS 341 (1986).

If a landlord seeks a money judgment for rent in action to recover leased premises on ground of nonpayment of rent, he must set forth his claim for such in his complaint. D.C. Code 1940, §§ 11-735, 45-911. *Shipley v. Major*, 44 A.2d 540, 1945 D.C. App. LEXIS 130 (Cr.App. 1945).

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint of nature of recovery sought against him. D.C. Code 1940, §§ 11-735, 45-911. *Shipley v. Major*, 44 A.2d 540, 1945 D.C. App. LEXIS 130 (Cr.App. 1945).

Set-off.

Breaching tenants may offset their damages to landlord with substitute rents even if landlords have made improvements or advertised to attract replacement tenants; landlords' efforts are taken into account by reducing offset to cover expense of securing new tenants and not by erasing breaching tenants' credits for replacement rents. *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

Tenant would be allowed to offset against damages owed for breach of lease the rent obtained from new tenant even though landlord included additional premises in substitute lease, even though inclusion of additional space makes task of allocating substitute lease revenues between premises made available by breach and those added by landlord more difficult. *Jack I. Bender & Sons v. Tom James Co.*,

37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

Allocation of revenues for substitute lease, which included space almost 20 times larger than that of original lease, to give breaching tenant credit for revenues from entire area was reasonable where original space was unlikely on its own to bring in any rent large enough to offset costs of readying for new tenant or converting it to nonrestaurant use. *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

For purposes of calculation of offset to tenant who breached lease for rents received where original space and additional space were combined in substitute lease, calculation of contribution of either of two areas to combined value was necessarily indeterminate because parcels had greater total value combined than separate. *Jack I. Bender & Sons v. Tom James Co.*, 37 F.3d 640, 1994 U.S. App. LEXIS 28424 (C.A.D.C. 1994).

In determining damages for tenant's wrongful abandonment of leased space, trial court properly offset tenant's rent liability with amount of increased rent to be received from new tenant over balance of old tenant's lease term. *International Com. on English in Liturgy v. Schwartz*, 573 A.2d 1303, 1990 D.C. App. LEXIS 97 (1990).

Where lease did not contain covenant to repair and there was no contractual duty on landlord to maintain premises in compliance with housing regulations, tenant was not entitled to maintain counterclaim, to landlord's suit for arrearages in rent, for repairs allegedly made by tenant for damages allegedly resulting from landlord's failure to repair. *Tutt v. Doby*,

265 A.2d 304, 1970 D.C. App. LEXIS 280 (App. 1970).

If landlord sues for unpaid rent in different months, tenant may set off and counterclaim for damages he has suffered in each of those months. *Burka v. Seidenberg*, 108 A.2d 159, 1954 D.C. App. LEXIS 183 (Cr.App. 1954).

Waiver of right to rent.

In action by agent-lessor against lessee to recover unpaid rent for leased tavern, irrespective of the number of premises, evidence was insufficient to show that agent-lessor had waived his right under lease or by his conduct had induced lessee's breach of the lease or to show a basis for estoppel against lessor. *Paul v. Holloway*, 124 A.2d 587, 1956 D.C. App. LEXIS 213 (Cr.App. 1956).

Landlord's prior refusal of proffered rent would not constitute a waiver which would entitle tenant, when sued for possession because of nonpayment of rent, to a trial on the merits without tendering the rent due, in absence of agreement supported by consideration that tenant could remain in possession without charge. *Crowder v. Lackey*, 46 A.2d 699, 1946 D.C. App. LEXIS 118 (Cr.App. 1946).

In action for possession of real property based on nonpayment of rent, where defendant at hearing refused to tender rent at court's request on ground that plaintiff, by her previous refusals had waived her right to rent money, court properly gave judgment for plaintiff at that point, as against contention that a material issue of fact for trial on the merits was raised by defendant's statement that plaintiff had previously refused tender of the rent and plaintiff's denial of the allegations. *Crowder v. Lackey*, 46 A.2d 699, 1946 D.C. App. LEXIS 118 (Cr.App. 1946).

§ 42-3212. Consolidation of actions for arrears of rent and possession.

If actions be brought separately for arrears of rent and for the possession, they may be afterwards consolidated and 1 judgment rendered in them for the possession and also for the rent.

(Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(g).)

Cross references. — Possessory actions, see § 16-1501 et seq.

Prior Codifications. — 1981 Ed., § 45-1412.

1973 Ed., § 45-912.

§ 42-3213. **Landlord's lien for rent — Time of existence.**

The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for 3 months after the rent is due and until the termination of any action for such rent brought within said 3 months.

(Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1229.)

Prior Codifications. — 1981 Ed., § 45-1413. 1973 Ed., § 45-915.

CASE NOTES

ANALYSIS

Charges not secured by lien.
Discharge of lien.
Execution sale proceeds.
In general.
Nature of lien.
Priority of lien.
Property subject to lien.
Rent secured by lien.
Time lien attaches.
Wrongful detention of tenant's chattels.

Charges not secured by lien.

Landlord's claim for water charges was a claim for damages for breach of covenant, and did not come within lien for rent. D.C. Code 1951, §§ 45-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

Statutory lien for rent should not be extended beyond terms of statute to include other items such as water charges unless clear intention of parties to make this a part of consideration for leasing premises is shown; and such intention did not appear from contract in which covenant to pay water charges was separate from provision setting out rent. D.C. Code 1951, §§ 59-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

Discharge of lien.

The tacit lien given to the landlord in the District of Columbia on the chattels of the tenant is discharged by the bona fide sale or removal of the chattels from the premises. *Webb v. Sharp*, 80 U.S. 14, 1871 U.S. LEXIS 1303 (U.S. Dist. Col. 1871).

The lien of a landlord is not lost or impaired by his suspension for a month of the execution issuing under the judgment obtained in attachment proceedings to enforce the same. *Gibson v. Gautier*, 12 D.C. 35 (D.C. Sup. 1881).

A landlord will lose his lien by conduct which misleads bona fide purchasers for valuable con-

sideration. *White v. Freedman's Bank*, 8 D.C. 509 (D.C. Sup. 1874).

Execution sale proceeds.

Under Rev.St. §§ 677, 678, abolishing distress for rent and providing that the landlord shall have a lien on such of the tenant's chattels on the premises as are subject to execution for debt, to continue for three months after rent is due, the marshal levying an execution against the tenant is obliged, on due notice given him by the landlord, to pay from the proceeds all rent due to the time of sale; and, if the sale takes place during the month, he is entitled to the rent for that month. *Gibson v. Gautier*, 12 D.C. 35 (D.C. Sup. 1881).

In general.

In the District of Columbia, the landlord has a tacit lien for his rent on the chattels of the tenant on the demised premises from the time the chattels are placed therein until the expiration of three months after the rent becomes due. *Webb v. Sharp*, 80 U.S. 14, 1871 U.S. LEXIS 1303 (U.S. Dist. Col. 1871).

Under District of Columbia statute, landlord acquired a statutory lien on personal property of tenant on premises from time of execution of lease and lien continued in full force for a period of three months after rent was due and until termination of any action to recover on lease. D.C. Code 1940, §§ 45-915, 45-916, subd. 2. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

A person in possession of personal property under a lien is the owner of it as against all the world, including the actual owner and his judgment creditors, and no one has a right to disturb his possession without paying his claim; and he does not lose his right to claim the property, where it has been seized under a writ of execution against the owner, by purchasing it at a sale under the writ, his action in that regard being no more than a prudent precaution to save the property from sacrifice. *Brown v. Petersen*, 25 App.D.C. 359, 1905 U.S. App. LEXIS 5287 (1905).

Under Act Cong. Feb. 22, 1867 (14 Stat. 404), concerning liens in the District of Columbia, a landlord can claim for rent due and in arrear, and also for any installment of rent, although the tenant has occupied the premises only for a part of the time during which said installment is accruing. *Joyce v. Wilkenning*, 8 D.C. 567 (D.C.Sup. 1874).

Nature of lien.

Under the landlord and tenant law of the District of Columbia (14 Stat. 404), the "tacit lien," given upon certain of the tenants' personal chattels on the premises, attaches at the commencement of the tenancy to any such chattels then on the premises, and continues to attach to them into whosoever hands the chattels may come during the time allowed by the act for instituting proceedings, unless the lien is displaced by the removal of the chattels or by the sale of them by the tenant in the ordinary course of mercantile transactions. It is not displaced by a sale of the stock in mass, while they remain in mass, to a person who knew that the premises were leased and continues to occupy them, selling in the ordinary way the goods, nor even by a second sale of that sort. *Fowler v. Rapley*, 82 U.S. 328, 1872 U.S. LEXIS 1256 (U.S. Dist. Col. 1872).

The statutory provisions of the District of Columbia statute giving landlord lien on such of tenant's personal chattels on premises as are subject to execution for debt, do not of their own force create a specific and perfected lien in the sense long understood as essential to overturn the priority granted to claim of United States under federal statute. 31 U.S.C. § 191; D.C. Code 1951, §§ 45-915, 45-916. *U.S. v. Saidman*, 231 F.2d 503, 1956 U.S. App. LEXIS 5254 (C.A.D.C. 1956).

A landlord's statutory lien exists independently of the several means of enforcement which the statute permits. D.C. Code 1940, §§ 45-915, 45-916, subd. 2. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

A landlord's statutory lien is not a "lien by legal proceedings" within Bankruptcy Act providing that liens obtained through legal proceedings against a person who is insolvent within four months prior to filing of petition in bankruptcy shall be void. D.C. Code 1940, §§ 45-915, 45-916, subd. 2; Bankr. Act § 67, sub. f, 11 U.S.C. § 107, sub. f. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by statute. D.C. Code 1951, §§ 45-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

The landlord's lien in the District of Columbia is statutory. D.C. Code 1940, § 45-915. *Munday v. Bricklayers, Masons & Plasterers Intern. Union of America*, 47 A.2d 398, 1946 D.C. App. LEXIS 133 (Cr.App. 1946).

The landlord's lien in District of Columbia is not dormant, but is in effect from the time personal chattels are brought upon leased premises and can only be displaced by a sale of the goods in the ordinary course of trade followed by their removal from the premises. D.C. Code 1940, § 45-915. *Munday v. Bricklayers, Masons & Plasterers Intern. Union of America*, 47 A.2d 398, 1946 D.C. App. LEXIS 133 (Cr.App. 1946).

Under the law a landlord cannot attach chattels of his tenant which have been removed from the leased premises before the rent has become due, although after judgment he may have execution against such chattels in whosoever hands they may be found. *Wallach v. Chesley*, 13 D.C. 209 (D.C.Sup. 1883).

Landlord's tacit lien on tenant's furniture for rent due exists independently of statutory methods for enforcing it and property subject thereto comes into possession of equity court or its officers subject to such lien. *Bryan v. Sanderson*, 10 D.C. 431 (D.C.Sup. 1877).

Priority of lien.

Landlords of taxpayer had no judgment lien and were not "judgment creditors" of taxpayer on August 4 when United States recorded its federal tax lien, and federal tax lien would prevail over judgment lien of landlords, where government assessed taxpayer on May 26 for unpaid federal taxes, and on July 5 landlords began suit for unpaid rent and obtained writ of attachment, and on July 11, 1961 writ was executed by United States marshal who seized goods belonging to taxpayer, and on August 4 government's tax lien was filed, and on August 18, 1961 landlords obtained judgment in municipal court. D.C. Code 1961, §§ 45-915, 45-916; 26 U.S.C. (I.R.C.1954) §§ 6321, 6322, 6323. *United States v. Leventhal*, 316 F.2d 341, 1963 U.S. App. LEXIS 6335 (C.A.D.C. 1963).

Where landlords of taxpayer had statutory lien on date when government assessed taxpayer for unpaid federal taxes, but no steps at all were taken to assert or enforce landlords' lien before federal tax lien was filed, landlords' lien was an inchoate unperfected lien which did not have precedence over lien of government. D.C. Code 1961, §§ 45-915, 45-916; 26 U.S.C. (I.R.C.1954) §§ 6321, 6322, 6323. *United States v. Leventhal*, 316 F.2d 341, 1963 U.S. App. LEXIS 6335 (C.A.D.C. 1963).

Landlord's claim under District of Columbia statute giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt could not be granted priority over tax claims of United

States for payment out of assets which were in hands of assignee for benefit of creditors, where landlord failed to perfect its lien by acquiring title or taking possession prior to the assignment. 31 U.S.C. § 191; D.C. Code 1951, §§ 45-915, 45-916. *U.S. v. Saidman*, 231 F.2d 503, 1956 U.S. App. LEXIS 5254 (C.A.D.C. 1956).

Where landlord brought action to recover possession of premises and rent due and recovered judgment under which levy was made on chattels which had been removed from leased premises after commencement of action, but, before the chattels were offered for sale, tenant filed voluntary petition in bankruptcy, the landlord's statutory lien and right to priority of payment out of proceeds was not impaired by the Bankruptcy Act. D.C. Code 1940, §§ 45-915, 45-916, subd. 2; Bankr. Act § 1 et seq., § 67, sub. f, 11 U.S.C. § 1 et seq., § 107, sub. f. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

Landlord's lien for rent on tenant's personal chattels on leased premises held superior to chattel mortgage given by tenant after tenancy commenced, but before commencement of period for which rent remained unpaid. D.C. Code 1929, T. 25, §§ 325, 326. *Spilman v. Geiger*, 58 F.2d 890, 1932 U.S. App. LEXIS 4785 (1932).

The District of Columbia statute giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt gives landlord a specific lien on specific property, and hence landlord had priority for payment out of assets which were in hands of assignee for benefit of creditors and which consisted of proceeds of sale of such chattels over tax claims of United States and of District of Columbia whose rights of priority were to be paid out of general assets. D.C. Code 1951, §§ 45-915, 47-2609, 47-2707; 31 U.S.C. § 191. *In re Lobel Enterprises*, 126 F.Supp. 792, 1954 U.S. Dist. LEXIS 2574 (D.D.C.1954).

Invocation of statutory enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels had been brought on premises was not lost when foreclosure sale was had under trust deed. D.C. Code 1951, §§ 45-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

Landlord's lien attaches at commencement of tenancy, or when chattels are brought on premises, and continues for three months after rent becomes due; and even though no rent was in arrears at time of execution of chattel deed of trust, landlord's lien would have priority, where deed of trust had been executed after tenancy commenced and after chattels had been brought on premises. *Elmira Corp. v. Bulman*,

135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

Where the goods and chattels of the tenant have been sold by virtue of an assignment, the landlord's claim upon the fund, to the extent of three months' rent, has priority under statute over the claims of simple contract creditors (R.S.D.C. § 678). *Fox v. Davidson*, 12 D.C. 102 (D.C.Sup. 1881).

Property subject to lien.

Where purchaser under conditional sales contract was a mere bailee of personalty sold thereunder, such personalty was not subject to execution for debt within landlord's lien statute, so as to entitle landlord to personalty seized by attachment as against claim of vendor. D.C. Code 1929, T. 25, §§ 325, 326. *Stern Co. of Washington v. Rosenberg*, 89 F.2d 843, 1937 U.S. App. LEXIS 3604 (1937).

Where, on March 11, landlord filed complaint against tenant for possession of rented office and for \$250 rental in arrears, on March 15, dealer engaged in buying, selling, and renting of office furniture purchased tenant's furniture and leased it to tenant and furniture remained on premises, sale did not affect landlord's lien. D.C. Code 1951, § 45-915. *Recachinas v. Kressin*, 146 A.2d 443, 1958 D.C. App. LEXIS 337 (Cr.App. 1958).

Where sale of rug on office floor to tenant's secretary was not made in ordinary course of trade and rug was not removed from premises, though no rent was due when sale was made, rug was subject to landlord's lien for three months' rent which subsequently accrued. D.C. Code 1940, § 45-915. *Munday v. Bricklayers, Masons & Plasterers Intern. Union of America*, 47 A.2d 398, 1946 D.C. App. LEXIS 133 (Cr.App. 1946).

The statute gives to the landlord a lien upon the goods of his tenant, but not upon the goods of other persons which are upon the demised premises. *Johnson v. Douglass*, 13 D.C. 36 (D.C.Sup. 1882).

Though a fraudulent sale of goods be set aside, they are nevertheless liable to the landlord's lien for rent due by the fraudulent vendee to the landlord, on whose premises they have been kept; and this, notwithstanding judgment creditors of the vendor issued execution before the landlord's lien attached. *Gibson v. Gautier*, 12 D.C. 35 (D.C.Sup. 1881).

Rent secured by lien.

Where rent is payable in monthly, quarterly, or annual periods, the lien does not extend to rent to accrue for any such period unless the period has actually commenced to run and the landlord's lien as to that particular installment of rent has become fixed. *R.P. Andrews Paper Co. v. Southern Soda Fountain Co.*, 46 App.D.C. 84, 1917 U.S. App. LEXIS 2509 (1917).

The tacit lien for rent given landlord by Landlord and Tenant Act extends only to rent due and rent which has actually commenced to accrue but is not yet payable, and hence does not extend to rent to accrue for any monthly, quarterly or annual period, provided in lease for payment thereof, unless such period has actually commenced to run and landlord's right to that installment of rent has become fixed and absolute. *The Richmond v. Cake*, 1 App.D.C. 447, 1893 U.S. App. LEXIS 3057 (1893).

Although four months' rent was due operation of landlord's lien was properly restricted to three months' rent under statute creating lien. Code 1940, § 45-915. *Klein v. Insurance Bldg.*, 46 A.2d 368, 1946 D.C. App. LEXIS 112 (Cr.App. 1946).

Under a statute giving a landlord a prior lien on goods on the premises subject to execution, to commence with the tenancy, the lien is for the periodical rent accruing when the levy is made, but not for succeeding periods, during which the officer keeps the goods upon the premises. *Harris v. Dammann*, 14 D.C. 90 (D.C.Sup. 1884).

Time lien attaches.

Landlord's statutory lien attaches at the mo-

ment chattels of tenants come upon leased premises. D.C. Code 1940, §§ 45-915, 45-916, subd. 2. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

Landlord's lien attached to rug on office floor when it was brought on to premises by tenant and continued throughout period of tenancy. D.C. Code 1940, § 45-915. *Munday v. Bricklayers, Masons & Plasterers Intern. Union of America*, 47 A.2d 398, 1946 D.C. App. LEXIS 133 (Cr.App. 1946).

Wrongful detention of tenant's chattels.

Where landlord held tenant's furniture and personal property not only for purpose of collecting overdue rent but also for purpose of collecting a penalty arbitrarily and illegally sought to be imposed by him, award of punitive damages in tenant's detinue action was proper. D.C. Code 1951, § 45-915. *Katz v. Myers*, 114 A.2d 75, 1955 D.C. App. LEXIS 253 (Cr.App. 1955).

§ 42-3214. Landlord's lien for rent — How enforced.

The said lien may be enforced:

(1) By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels;

(2) By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosoever hands they may be found;

(3) By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear.

(Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1230.)

Prior Codifications. — 1981 Ed., § 45-1414. 1973 Ed., § 45-916.

CASE NOTES

ANALYSIS

In general.
Priority of lien.

In general.

Under District of Columbia statute, landlord acquired a statutory lien on personal property of tenant on premises from time of execution of lease and lien continued in full force for a period of three months after rent was due and until termination of any action to recover on

lease. D.C. Code 1940, §§ 45-915, 45-916, subd. 2. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

A landlord's statutory lien exists independently of the several means of enforcement which the statute permits. D.C. Code 1940, §§ 45-915, 45-916, subd. 2. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

Act Cong. Feb. 22, 1867, providing for the enforcement of a landlord's lien, is not affected by section 10 of the same act, providing that

proceedings to enforce any lien shall be, in equity. *The Richmond v. Cake*, 1 App.D.C. 447, 1893 U.S. App. LEXIS 3057 (1893).

Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by statute. D.C. Code 1951, §§ 45-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

Invocation of statutory enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels had been brought on premises was not lost when foreclosure sale was had under trust deed. D.C. Code 1951, §§ 45-915, 45-916. *Elmira Corp. v. Bulman*, 135 A.2d 645, 1957 D.C. App. LEXIS 308 (Cr.App. 1957).

To compel a marshal levying on goods to pay over one year's rent, for which a landlord has a lien under the statute, the latter may move the court out of which the execution issues for an order to pay the amount due him from the sale, and this motion may be made at any time before the money is paid over; the marshal being bound, on receipt of a landlord's notice, to retain the money. *Gibson v. Gautier*, 12 D.C. 35 (D.C.Sup. 1881).

Priority of lien.

Where landlords of taxpayer had statutory lien on date when government assessed taxpayer for unpaid federal taxes, but no steps at all were taken to assert or enforce landlords' lien before federal tax lien was filed, landlords' lien was an inchoate unperfected lien which did not have precedence over lien of government. D.C. Code 1961, §§ 45-915, 45-916; 26 U.S.C. (I.R.C.1954) §§ 6321, 6322, 6323. *United*

States v. Leventhal, 316 F.2d 341, 1963 U.S. App. LEXIS 6335 (C.A.D.C. 1963).

Landlords of taxpayer had no judgment lien and were not "judgment creditors" of taxpayer on August 4 when United States recorded its federal tax lien, and federal tax lien would prevail over judgment lien of landlords, where government assessed taxpayer on May 26 for unpaid federal taxes, and on July 5 landlords began suit for unpaid rent and obtained writ of attachment, and on July 11, 1961 writ was executed by United States marshal who seized goods belonging to taxpayer, and on August 4 government's tax lien was filed, and on August 18, 1961 landlords obtained judgment in municipal court. D.C. Code 1961, §§ 45-915, 45-916; 26 U.S.C. (I.R.C.1954) §§ 6321, 6322, 6323. *United States v. Leventhal*, 316 F.2d 341, 1963 U.S. App. LEXIS 6335 (C.A.D.C. 1963).

Landlord's claim under District of Columbia statute giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt could not be granted priority over tax claims of United States for payment out of assets which were in hands of assignee for benefit of creditors, where landlord failed to perfect its lien by acquiring title or taking possession prior to the assignment. 31 U.S.C. § 191; D.C. Code 1951, §§ 45-915, 45-916. *U.S. v. Saidman*, 231 F.2d 503, 1956 U.S. App. LEXIS 5254 (C.A.D.C. 1956).

Where landlord brought action to recover possession of premises and rent due and recovered judgment under which levy was made on chattels which had been removed from leased premises after commencement of action, but, before the chattels were offered for sale, tenant filed voluntary petition in bankruptcy, the landlord's statutory lien and right to priority of payment out of proceeds was not impaired by the Bankruptcy Act. D.C. Code 1940, §§ 45-915, 45-916, subd. 2; Bankr.Act § 1 et seq., § 67, sub. f, 11 U.S.C. § 1 et seq., § 107, sub. f. *Moses v. Labofish*, 132 F.2d 16, 1942 U.S. App. LEXIS 2521 (1942).

§ 42-3215. Landlord's lien for rent — When attachment issuable; executing officer's power of entry.

Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same.

(Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1231.)

Prior Codifications. — 1981 Ed., § 45-1415.

1973 Ed., § 45-917.

§ 42-3216. Landlord's lien for rent — Property subject to lien not to be executed on by another without payment of rent due; when rent in arrears exceeds 3 months.

No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided, the said arrears of rent do not amount to more than 3 months rent, and in case the said arrears shall exceed 3 months rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, 3 months rent, may proceed to execute his judgment as he might have done before the making of this section; and the marshal is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money.

(8 Ann, ch. 14, § 1, 1709; Kilty's Rep. 248; Alex. Br. Stat. 681; Comp. Stat. D.C., 325, § 41.)

Prior Codifications. — 1981 Ed., § 45-1416. 1973 Ed., § 45-918.

CASE NOTES

In general.

St. 8 Anne, c. 14, providing that "after the 1st day of May 1710, no goods or chattels," etc., "lying or being upon any messuage, lands," etc., "which are or shall be leased for life or term of years, or otherwise, shall be liable to be taken on any execution on any pretense whatsoever, unless the party at whose suit the said execution is sued out shall, before the removal of such goods off the premises by virtue of such execution, pay to the landlord of said premises or his bailiff all such sums as shall be due for rent for the premises at the time of the taking

of such goods or chattels by virtue of such action, provided said arrears do not amount to more than one year's rent," etc., is in force in this district; and hence, if the marshal levy an execution and make sale of property, he is obliged, after due notice given him by the landlord, on whose premises the goods are, to pay from the proceeds all rent due up to the time of the sale, and, if the sale take place during the month, there can be no division of the rent for that month. *Gibson v. Gautier*, 12 D.C. 35 (D.C.Sup. 1881).

§ 42-3217. Distress not unlawful and party making it not trespasser ab initio because of irregularity; special damages recoverable; costs; tender of amends defeats recovery.

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed

a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case at the election of the plaintiff or plaintiffs; provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs; provided nevertheless, that no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.

(11 Geo. 2, ch. 19, §§ 19, 20, 1738; Kilty's Rep. 251; Alex. Br. Stat. 741, 742; Comp. Stat. D.C., 334, §§ 66, 67.)

Prior Codifications. — 1981 Ed., § 45-1417. 1973 Ed., § 45-919.

CASE NOTES

In general.

The right of distress in District of Columbia has been abolished. *Trans-Lux Radio City Corp.*

v. Service Parking Corp., 54 A.2d 144, 1947 D.C. App. LEXIS 151 (Cr.App. 1947).

§ 42-3218. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.

If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any court of record.

(11 Geo. 2, ch. 19, § 3, 1738; Kilty's Rep. 251; Alex. Br. Stat. 732; Comp. Stat. D.C., 329, § 53.)

Prior Codifications. — 1981 Ed., § 45-1418. 1973 Ed., § 45-920.

§ 42-3219. Representatives of life tenant may recover proportion of rent from under-tenant.

Where any tenants for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant

for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life dies on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively.

(11 Geo. 2, ch. 19, § 15, 1738; Kilty's Rep. 251; Alex. Br. Stat. 739; Comp. Stat. D.C., 333, § 64.)

Prior Codifications. — 1981 Ed., § 45-1419. 1973 Ed., § 45-921.

§ 42-3220. Action in debt may be brought for rent in arrears under lease or demise for life.

It shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done, in case such rent were due, and reserved upon a lease for years.

(8 Ann, ch. 14, § 4, 1709; Kilty's Rep. 248; Alex. Br. Stat. 682; Comp. Stat. D.C., 325, § 42.)

Prior Codifications. — 1981 Ed., § 45-1420. 1973 Ed., § 45-922.

§ 42-3221. Action by landlord for use and occupation of property where no deed; parol agreement as evidence of quantum of damages.

It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered.

(11 Geo. 2, ch. 19, § 14, 1738; Kilty's Rep. 251; Alex. Br. Stat. 738; Comp. Stat. D.C., 333, § 63.)

Prior Codifications. — 1981 Ed., § 45-1421. 1973 Ed., § 45-923.

§ 42-3222. Lease under control of a person with a mental disability — Surrender and renewal; guardian or committee; court order.

In all cases where any person with a mental disability is or shall be entitled or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of 1 or more person or persons, or for any term or number of years, absolute or determinable on the death of 1 or more person or persons, or otherwise; it shall and may be lawful to and for the person with a mental disability, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor, signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or surrenders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct.

(11 Geo. 3, ch. 20, § 1, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D.C., 336, § 74; Apr. 24, 2007, D.C. Law 16-305, § 64(a), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1422.

1973 Ed., § 45-924.

Effect of amendments. — D.C. Law 16-305 rewrote this section, which formerly read:

"§ 42-3222. Leases under control of mentally handicapped—Surrender and renewal; committee or guardian; court order."

"In all cases where any lunatic is or shall be entitled, or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of 1 or more person or persons, or for any term or number of years, absolute or determinable on the death of 1 or more person or persons, or otherwise; it shall and may be lawful to and for such lunatic, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor,

signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or surrenders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct."

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3223. Leases under control of a person with a mental disability — Lease pursuant to provisions of § 42-3222 valid.

All and every such lease or leases so to be made or executed shall be deemed as good and valid, and effectual in the law, to all intents and purposes, as if the

person with a mental disability was at the time of making or executing thereof of without a mental disability.

(11 Geo. 3, ch. 20, § 2, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D.C., 336, § 75; Apr. 24, 2007, D.C. Law 16-305, § 64(b), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1423.

1973 Ed., § 45-925.

Effect of amendments. — D.C. Law 16-305 rewrote this section, which formerly read:

"§ 42-3223. Leases under control of mentally handicapped—Lease pursuant to provisions of § 42-3222 valid.

"All and every such lease or leases so to be

made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the law, to all intents and purposes, as if such lunatic was at the time of making or executing thereof of sane mind, and had executed the same in his or her own proper person."

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3224. Leases under control of a person with a mental disability — Money received for renewal paid to guardian for benefit of person with a disability; characterization of money at death of person with a disability.

All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the person with a disability, and be applied and disposed of for the benefit of the person with the disability, in such manner as the chancellor shall direct: but, upon the death of the person with the disability, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of the person with the disability, at his, her or their death, shall, as between the representatives of the real and personal estates of all such people with disabilities, be considered as real estate, unless such the person with a disability shall be a tenant for life only, and then the same shall be considered as personal estate.

(11 Geo. 3, ch. 20, § 3, 1771; Kilty's Rep. 253; Alex. Br. Stat. 792; Comp. Stat. D.C., 336, § 76; Apr. 24, 2007, D.C. Law 16-305, § 64(c), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1424.

1973 Ed., § 45-926.

Effect of amendments. — D.C. Law 16-305 rewrote this section, which formerly read:

"§ 42-3224. Leases under control of mentally handicapped—Money received for renewal paid to guardian for benefit of handicapped; characterization of money at death of handicapped.

"All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a

deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the said lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the chancellor shall direct: but, upon the death of such lunatic or lunatics, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of such lunatic or lunatics, at his, her or their death, shall, as between the representatives of the real and personal estates of all such lunatics, be considered as real estate,

unless such lunatic or lunatics shall be tenants for life only; and then the same shall be considered as personal estate."

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3225. Lease held by an infant or person with a mental disability — Surrender and renewal; guardian or committee; court order.

In all cases where any person under the age of 18 years, or any person with mental illness, is or shall become interested in or entitled to any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politic, corporate or collegiate, aggregate or sole, for the life or lives of 1 or more person or persons, or for any term of years, either absolute or determinable upon the death of 1 or more person or persons or otherwise, it shall and may be lawful for such person under the age of 18 years, or for his or her guardian or guardians, or other person or persons on his or her behalf, and for such person with mental illness, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of 18 years, and such persons with mental illness, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of 18 years, or person with mental illness, 1 or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct.

(29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D.C., 335, § 70; July 22, 1976, D.C. Law 1-75, § 4(j), 23 DCR 1182; Apr. 24, 2007, D.C. Law 16-305, § 64(d), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1425.

1973 Ed., § 45-927.

Effect of amendments. — D.C. Law 16-305, in the section name line, substituted "person with a mental disability" for "mentally handicapped"; and substituted "person with mental illness" for "lunatic" and "persons with mental illness" for "lunatics".

Legislative history of Law 1-75. — Law 1-75, the "District of Columbia Age of Majority

Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3226. Lease held by an infant or person with a mental disability — Costs of renewal chargeable to estate of infant or person with a disability or deemed charge upon leasehold.

All and every sum and sums of money and other consideration, paid or advanced by any such guardian, trustee, committee or other person, for or on account of the renewal of any such lease or leases, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatic for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premises, together with interest for the same, as the said court shall direct and determine.

(29 Geo. 2, ch. 31, § 2, 1756; Kilty's Rep. 253; Alex. Br. Stat. 789; Comp. Stat. D.C., 335, § 71; Apr. 24, 2007, D.C. Law 16-305, § 64(e), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1426.

1973 Ed., § 45-928.

Effect of amendments. — D.C. Law 16-305 rewrote the section heading, which formerly read: "Lease held by infant or mentally handi-

capped—Costs of renewal chargeable to estate of infant or handicapped or deemed charge upon leasehold."

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3227. Lease held by an infant or person with a mental disability — New leases to be of same nature and subject to same liabilities as surrendered leases.

The respective leases to be so renewed, shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made.

(29 Geo. 2, ch. 31, § 3, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D.C., 335, § 72; Apr. 24, 2007, D.C. Law 16-305, § 64(f), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1427.

1973 Ed., § 45-929.

Effect of amendments. — D.C. Law 16-305 rewrote the section heading, which formerly read: "Lease held by infant or mentally handi-

capped—New leases to be of same nature and subject to same liabilities as surrendered leases."

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3228. Lease held by an infant or person with a mental disability — Renewed lease valid.

Every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender had been made by and on the behalf of a person of full age, or sane mind.

(29 Geo. 2, ch. 31, § 4, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D.C., 336, § 73; Apr. 24, 2007, D.C. Law 16-305, § 64(g), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1428.

1973 Ed., § 45-930.

Effect of amendments. — D.C. Law 16-305 rewrote the section heading, which formerly

read: "Lease held by infant or mentally handicapped—Renewed lease valid".

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3229. Surrender for new lease good without surrender of underleases; underleases continue unaffected; all rights and remedies to continue.

In case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all the underleases, be as good and valid, to all intents and purposes, as if all the underleases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the underlessees shall hold and enjoy the messuages, lands, and tenements, in the respective underleases, comprised, as if the original leases, out of which the respective underleases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have, and be entitled to, such and the same remedy, by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such underlease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such underlease was derived, as they would have had in case such former lease had been still continued, or as they would have had, in case the respective underleases had been renewed under such new principal lease.

(4 Geo. 2, ch. 28, § 6, 1731; Kilty's Rep. 249; Alex. Br. Stat. 708; Comp. Stat. D.C., 328, § 50.)

Prior Codifications. — 1981 Ed., § 45-1429.

1973 Ed., § 45-931.

§ 42-3230. Grant or assignment of reversion of premises or by lessee not to affect rights or duties under lease.

The grantee or assignee of the reversion of any leased premises shall have the same right of action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee,

or assignee, upon any covenants in the lease which the lessee might have had against the lessor.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1234.)

Prior Codifications. — 1981 Ed., § 45-1430. 1973 Ed., § 45-932.

CASE NOTES

ANALYSIS

Assignment of lease.
Covenants running with land.
In general.

Assignment of lease.

Where landlord made no objection to assignment of lease to partnership and ratified assignment by accepting from partnership and receiver for partnership business rent for two years as it became due, assignors could not question partnership's ownership of lease on ground that lease prohibited assignment except by consent of landlord. *Mars v. Spanos*, 139 F.2d 369, 1943 U.S. App. LEXIS 2288 (1943).

Where retiring partner received back his contributions to partnership and orally assigned to copartner rights in five-year lease of store, lease became property of general partnership under oral agreement between assignee and third person, and general partnership immediately took possession of leased premises with implied consent of landlord and discharged obligations under lease until dissolved by order of court, as respects rights of assignors and assignees, both assignments were completely executed and hence not avoidable for violation of statute of frauds. D.C. Code 1940, § 12-301. *Mars v. Spanos*, 139 F.2d 369, 1943 U.S. App. LEXIS 2288 (1943).

A covenant in a lease against assigning, being for the benefit of lessor, may be availed of only by him or his representative or assignee. *Mars v. Spanos*, 139 F.2d 369, 1943 U.S. App. LEXIS 2288 (1943).

Where premises had been sublet by the tenant, contrary to the lease, while the rent therefor was in arrears, and the lessor thereafter sold the property and assigned the lease to another, the acceptance by the lessor, after the assignment, of the rent due up to the time of the assignment, does not waive the assignee's right to forfeit the lease for the subletting. *Bailey v. Allen E. Walker & Co.*, 290 F.2d 282, 1923 U.S. App. LEXIS 1803 (1923).

Assignee of original lessor had all the rights of assignor, including right to hold tenant to its waiver of jury in action for wrongful abandonment. *International Com. on English in Liturgy v. Schwartz*, 573 A.2d 1303, 1990 D.C. App. LEXIS 97 (1990).

Statute puts landlord's assignee in exactly same position as landlord with respect to enforcement of lease and included is right to enforce every provision of lease including tenant's express waiver of right to a notice to quit. D.C. Code 1981, § 45-1430. *Word v. Tiber Island Cooperative Homes, Inc.*, 491 A.2d 521, 1985 D.C. App. LEXIS 383 (1985).

Landlord's assignee held precisely same rights as landlord and, as successor landlord, was under no duty to give tenant any notice to quit where tenant had waived his right to such notice when he signed lease with original landlord. D.C. Code 1981, § 45-1430. *Word v. Tiber Island Cooperative Homes, Inc.*, 491 A.2d 521, 1985 D.C. App. LEXIS 383 (1985).

Where, during monthly tenancy under two year lease containing provision that if tenant should remain in possession after expiration of term, he would become tenant by month, lessors executed five year lease of same property to third party with provisions that new lease was subject to prior lease, and that lessors would assign prior lease to the third parties, and where lessors then completed such assignment, new lease was "concurrent lease", involving assignment of part of reversion, and lessee § thereunder could enforce covenants of prior lease against monthly tenant. D.C. Code 1951, § 45-932. *Gulf Motors v. Fenner*, 114 A.2d 543, 1955 D.C. App. LEXIS 255 (Cr.App. 1955).

Covenants running with land.

If a covenant in a lease will be for the benefit either of the landlord or tenant, by reason of his relation to the land, it concerns the land, so as to run with it. *Bailey v. Allen E. Walker & Co.*, 290 F.2d 282, 1923 U.S. App. LEXIS 1803 (1923).

A covenant against subletting by the tenant, and giving the landlord a right to terminate the lease for subletting without his consent, runs with the land, so as to be enforceable by an assignee of the land, under Code, § 1234 (D.C. Code 1929, T. 25, § 342) which gives the assignee the same right of action against the lessee which the assignor might have had. *Bailey v. Allen E. Walker & Co.*, 290 F.2d 282, 1923 U.S. App. LEXIS 1803 (1923).

In general.

That purchasers' action against vendor's tenant, holding over after expiration of term,

sounded in contract, and not in tort, was not prejudicial to tenant. *Selden v. Lee*, 3 F.2d 335, 1925 U.S. App. LEXIS 3740 (1925).

Purchasers could recover for use and occupation against vendor's tenant, holding over after expiration of term. *Selden v. Lee*, 3 F.2d 335, 1925 U.S. App. LEXIS 3740 (1925).

Defendant could not urge that plaintiff did

not have right to bring suit to recover possession of leased premises because there was no proof that lease had been transferred by original lessor to plaintiff, where defendant in answer admitted that he was holding premises as a monthly tenant of plaintiff. D.C. Code 1940, § 45-820. *Banks v. Torre*, 56 A.2d 52, 1947 D.C. App. LEXIS 192 (Cr.App. 1947).

§ 42-3231. Grants of remainders, reversions, and rents good without attornment; payment of rent to grantor without notice valid.

All grants or conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made; provided, nevertheless, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee.

(4 Ann. ch. 16, §§ 9, 10, 1705; Kilty's Rep. 246; Alex. Br. Stat. 660, 661; Comp. Stat. D.C., 496, §§ 31, 32.)

Prior Codifications. — 1981 Ed., § 45-1431. 1973 Ed., § 45-933.

§ 42-3232. Fraudulent attornment void; possession not changed by such attornment; limitation on scope of provisions.

All and every fraudulent attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be anywise changed, altered, or affected by any such attornment or attornments; provided always, that nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited.

(11 Geo. 2, ch. 19, § 11, 1738; Kilty's Rep. 251; Alex. Br. Stat. 737; Comp. Stat. D.C., 332, § 60.)

Prior Codifications. — 1981 Ed., § 45-1432. 1973 Ed., § 45-934.

CHAPTER 32A. LEAD LEVEL TEST OF WATER IN MULTIPLE DWELLINGS.

Sec.

42-3251. Definitions.

42-3252. Testing.

42-3253. Violations.

Sec.

42-3254. Rules and procedures.

42-3255. Fines and penalties.

§ 42-3251. Definitions.

For the purposes of this chapter, the term:

(1) "Dwelling unit" means any habitable room or group of habitable rooms located within a residential building and forming a single unit which is used or intended to be used for living, sleeping, and the preparation and eating of meals; including a bachelor apartment.

(2) "Multiple Dwelling" means any residential building containing 3 or more dwelling units, 3 or more rooming units, or any combination of dwelling or rooming units totaling 3 or more.

(3) "Owner" means any individual, corporation, association, or partnership listed as the legal title holder of record and any owners' association legally incorporated in accordance with Chapter 9 of Title 29 or Chapter 19 of this title that is the recognized representative of the households in a condominium or cooperative housing building.

(4) "WASA" means the District of Columbia Water and Sewer Authority established by § 34-2202.02.

(Apr. 8, 2005, D.C. Law 15-303, § 2, 52 DCR 1690; July 2, 2011, D.C. Law 18-378, § 3(ii), 58 DCR 1720.)

Effect of amendments. — D.C. Law 18-378, in par. (3), validated a previously made technical correction.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Multiple Dwelling Residence Water Lead Level Test Temporary Act of 2004 (D.C. Law 15-206, December 7, 2004, law notification 52 DCR 450).

Legislative history of Law 15-303. — Law 15-303, the "Multiple Dwelling Residence Water Lead Level Test Act of 2004", was introduced in Council and assigned Bill No. 15-980,

which was referred to the Committee on Public works and the Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-700 and transmitted to both Houses of Congress for its review. D.C. Law 15-303 became effective on April 8, 2005.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 42-1218.

§ 42-3252. Testing.

(a) The Mayor shall require the owner of a multiple dwelling to order a water lead level test kit from WASA to sample the tap water in a dwelling or rooming unit for the presence of lead within 15 calendar days of a written request to do so by a rental tenant or owner-occupant of the unit. The rental tenant or owner-occupant shall also send a copy of this written request to the Mayor.

(b)(1) The owner shall order a water lead level test kit for each rental tenant and owner-occupant of the dwelling who requests a test, up to a maximum of 2% of the total units in the multiple dwelling or 6 units, whichever is less. In multiple dwellings of less than 50 units, the owner shall order at least one

water lead level test kit if requested to by a rental tenant or owner-occupant of the dwelling.

(2) An owner shall be required to order a water lead level test kit pursuant to this chapter no more than once in a 6-month period for each unit whose rental tenant or owner-occupant requests a test kit.

(c) WASA shall send a water lead level test kit to each owner upon request. At the time WASA sends a water lead level test kit to an owner in response to a request pursuant to this chapter, WASA shall also send written notice to the Mayor that it has sent the water lead level test kit.

(d) Within 15 calendar days of receiving the water lead level test kit from WASA, the owner shall provide the water lead level test kit to an occupant of each unit being tested and send written certification to the Mayor that the owner has provided the kit.

(e) The rental tenant or owner-occupant of the unit being tested shall send a sample of the water it collects from the unit to WASA to have it tested for the lead level.

(f) WASA shall ensure the conducting of a lead level test of the water sample at its expense and shall mail the result of the water lead level test to both the dwelling owner and to the rental tenant or owner-occupant of the unit in which the water sample was collected when the result is available.

(g) Within 15 calendar days of receiving the water lead level test result from WASA, the owner shall:

(1) Provide a written copy of the water lead level test result to any rental tenant or owner-occupant of the multiple dwelling who requests a copy of the test result and post the test result in a conspicuous place on the dwelling's premises; and

(2) Send written certification to the Mayor that the owner has provided a written copy of, and posted, the water lead level test result in the manner prescribed by this subsection.

(Apr. 8, 2005, D.C. Law 15-303, § 3, 52 DCR 1690.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Multiple Dwelling Residence Water Lead Level Test Temporary Act of 2004 (D.C. Law 15-206, December 7, 2004, law notification 52 DCR 450).

Legislative history of Law 15-303. — For Law 15-303, see notes following § 42-3251.

§ 42-3253. Violations.

(a) Whenever the Mayor finds reasonable grounds to believe that a violation of any provision of this chapter exists, he or she shall give notice of the alleged violation to the person or persons responsible for that violation. Each notice of violation shall be in writing and shall meet the following requirements:

- (1) State the nature of the violation;
- (2) Indicate the provision of this chapter being violated;
- (3) Allow a reasonable time for the performance of any corrective action required by the notice; and
- (4) Be signed by the Mayor or the Mayor's authorized agent.

(b) Each notice shall be served upon the persons responsible for correcting the violation described in the notice.

(c) The notice shall be to be properly served upon the person to be notified if served by any of the following means:

(1) By serving a copy of the notice upon the person personally;

(2) By leaving a copy of the notice at the person's usual place of business or at the person's usual residence with a person over the age of 16 years;

(3) If no residence or place of business can be found in the District following a reasonable search, by leaving a copy of the notice with any agent of the person to be notified who has any authority or duty with reference to the premises to which the notice relates, or by leaving a copy of the notice at the office of that agent with any person employed in that office;

(4) By mailing a copy of the notice with a receipt of notice included, postage prepaid, to the last known address of the person to be notified; or

(5) By publishing a copy of the notice on 3 consecutive days in a daily newspaper of general circulation published in the District.

(d) Failure of an owner to comply with the provisions of this chapter upon a determination by the Mayor that a violation has occurred shall be punishable by a fine of \$100 for each day of noncompliance.

(Apr. 8, 2005, D.C. Law 15-303, § 4, 52 DCR 1690.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Multiple Dwelling Residence Water Lead Level Test Temporary Act of 2004 (D.C. Law 15-206, December 7, 2004, law notification 52 DCR 450).

Legislative history of Law 15-303. — For Law 15-303, see notes following § 42-3251.

§ 42-3254. Rules and procedures.

The Mayor is authorized to promulgate rules and to establish procedures to implement this chapter.

(Apr. 8, 2005, D.C. Law 15-303, § 5, 52 DCR 1690.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 5 of Multiple Dwelling Residence Water Lead Level Test Temporary Act of 2004 (D.C. Law 15-206, December 7, 2004, law notification 52 DCR 450).

Delegation of Authority. — Delegation of Authority to the Director, Department of Health, see Mayor's Order 2005-102, June 17, 2005 (52 DCR 8169).

Legislative history of Law 15-303. — For Law 15-303, see notes following § 42-3251.

§ 42-3255. Fines and penalties.

Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules.

(Apr. 8, 2005, D.C. Law 15-303, § 6, 52 DCR 1690.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 6 of Multiple Dwelling Residence Water Lead Level Test Temporary Act of 2004 (D.C. Law 15-206, December 7, 2004, law notification 52 DCR 450).

Legislative history of Law 15-303. — For Law 15-303, see notes following § 42-3251.

CHAPTER 33. MASTER-METERED APARTMENT BUILDINGS.

Sec.

42-3301. Definitions.

42-3302. Opportunity for tenants to receive service in own names; payments made by tenants.

42-3303. Appointment of receiver; termination.

Sec.

42-3304. Penalties.

42-3305. Exclusiveness of remedy.

42-3306. Findings required prior to termination of service.

42-3307. Regulations.

§ 42-3301. Definitions.

For the purposes of this chapter:

(1) The term “apartment house” means any building or part thereof, not used primarily for transient occupancy, in which there are 3 or more apartments, each with 1 or more habitable rooms with kitchen and bathroom facilities exclusively for use of and under the control of the occupant thereof.

(2) The term “tenant” means any person who holds or possesses a habitation in subordination to the title of the owner of the premises in which such habitation is located, with the consent of the owner.

(Sept. 13, 1980, D.C. Law 3-94, § 2, 27 DCR 3500.)

Prior Codifications. — 1981 Ed., § 43-541.

Legislative history of Law 3-94. — Law 3-94 was introduced in Council and assigned Bill No. 3-186, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-216 and transmitted to both Houses of Congress for its review.

§ 42-3302. Opportunity for tenants to receive service in own names; payments made by tenants.

(a) Wherever an owner, agent, lessor or manager of an apartment house is billed directly by a company, electricity supplier, natural gas supplier, or gas company (any of which shall be referred to as “company”) for service furnished to such apartment house not occupied exclusively by such owner, agent, lessor or manager, and such company has actual or constructive knowledge that the tenants of such apartment house are not the persons to whom the company sends its bills, such company shall not terminate such service for nonpayment of a delinquent account owed to such company by such owner, agent, lessor or manager unless such company provides an opportunity, where practicable, for such tenants to receive service in their own names, either individually or collectively, without any liability for the amount due while service was billed directly to the lessor, owner, agent or manager. Security deposits or guarantees of payment may only be required as provided in part V of the Consumer Bill of Rights, Public Service Commission of the District of Columbia Order No. 6084 (15 DCMR 307) and the Public Service Commission of the District of Columbia Formal Case No. 760 (15 DCMR 409); provided, however, if it is not practicable for such tenants to receive service in their own names, the company shall not terminate service to such apartment house but may pursue the remedy provided in § 42-3303.

(b) Any payments made by the tenants of any apartment house pursuant to subsection (a) of this section shall be deemed to be in lieu of an equal amount of rent or payment for use and occupancy and each tenant shall be permitted to deduct such amounts from any sum of rent or payment for use and occupancy due and owing or to become due and owing to the owner, agent, lessor or manager.

(c) Nothing in this section shall be construed to prevent the company from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

(Sept. 13, 1980, D.C. Law 3-94, § 3, 27 DCR 3500; Feb. 24, 1987, D.C. Law 6-192, § 20, 33 DCR 7836; May 9, 2000, D.C. Law 13-107, § 202(a), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 20(a), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-542.

Effect of amendments. — D.C. Law 13-107 in subsec. (a) substituted “company, electricity supplier, or gas company (any of which shall be referred to as ‘company’) for service” for “electric or gas company for utility service”.

D.C. Law 15-227, in subsec. (a), substituted “natural gas supplier, or gas company” for “or gas company”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(a) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 3-94. — For legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.

Legislative history of Law 6-192. — Law 6-192 was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-107. — Law

13-107, the “Retail Electric Competition and Consumer Protection Act of 1999,” was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-227. — Law 15-227, the “Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004,” was introduced in Council and assigned Bill No. 15-679, and was retained by Council. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-567 and transmitted to both Houses of Congress for its review. D.C. Law 15-227 became effective on March 16, 2005.

References in text. — “The Consumer Bill of Rights,” referred to in the second sentence of subsection (a) of this section, is now included as Chapter V of Title 15, D.C.M.R.

CASE NOTES

In general.

Public Service Commission departure from policy of using a five-year average as measure of uncollectible accounts was justified in natural gas rate case considering dramatic increase in uncollectibles particularly with master-metered apartments under new law prohibiting a

utility from terminating gas service to such apartment buildings without first giving tenants an opportunity to receive service in their own names. D.C. Code 1981, §§ 43-542, 43-906. *Office of People’s Counsel v. Public Service Com.*, 482 A.2d 404, 1984 D.C. App. LEXIS 507 (1984).

§ 42-3303. Appointment of receiver; termination.

(a)(1) Upon nonpayment of a delinquent account by the owner, agent, lessor, or manager of an apartment house who is billed directly by a company,

electricity supplier, or gas company (any of which shall be referred to as "company") for service furnished to such apartment house, such company, or the tenants residing in the affected apartment house, may petition the Superior Court of the District of Columbia for appointment of a receiver of the rents or payments for use and occupancy for such apartment house. The Chief Judge of the Superior Court or such Judge's designee, upon presentation by the petitioner of a verified petition indicating such nonpayment of a delinquent account, shall immediately issue an order requiring such owner, agent, lessor, or manager, as respondent, to show cause why a receiver should not be appointed.

(2) The order of the Court, together with a copy of the verified petition, shall be served on the owner, agent, lessor, or manager at his last known address or by such other method as the Court may direct and shall be posted in a conspicuous place upon the apartment house in question.

(3) A hearing on the show cause order shall be held no later than 72 hours after its issuance or the first court day thereafter. Upon a prima facie showing by affidavit, testimony or otherwise, that delinquent electric company, electricity supplier, gas company, or natural gas supplier bills on the subject apartment house remain unpaid, the Court shall forthwith appoint a receiver to collect rents or payments for use and occupancy from the tenants thereof and to pay current electric company, electricity supplier, or gas company bills as hereinafter required. Prior to said hearing, respondent may file an answer to the petition raising such grounds of defense as respondent may have; except, that any set-offs, counterclaims, or third-party claims shall not be grounds for refusing to appoint a receiver.

(4) The receiver appointed by the Court shall have the authority to take such action as it deems necessary to collect all rents or payments for use and occupancy from the tenants of the apartment house in question in place of the owner, agent, lessor or manager. Any monies remaining after such payments, fees and costs shall be turned over to the owner, agent, lessor, or manager. The receiver shall pay the electric company, electricity supplier, gas company, or natural gas supplier from the rents and payments for services provided the company on and after the date of his appointment. The owner, agent, lessor, or manager shall be liable for the reasonable fees and costs determined by the Court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver; provided, that no fees or costs shall be turned over until after payment of current electric company, electricity supplier, gas company, or natural gas supplier on the apartment house has been made. Any monies remaining after such payments, fees and costs shall be turned over to the owner, agent, lessor, or manager. Upon order of the Court, the receiver shall become trustee of any escrow accounts or other funds established by the tenants or otherwise into which rents or payments for use and occupancy have been paid or are being held. The Court shall require accountings to be made by the receiver at such times as the Court determines to be just, reasonable and necessary.

(b) Any receivership established pursuant to subsection (a) of this section shall be terminated by the Court upon its finding that the arrearage which was

the subject of the original petition has been satisfied, or that all tenants have agreed to assume liability in their own names for prospective service supplied by the electric company, electricity supplier, gas company, or natural gas supplier, or that the apartment house has been sold and the new owner has assumed liability for prospective service supplied by the electric company, electricity supplier, or gas company.

(c) Nothing in this section shall be construed to prevent the electric company, electricity supplier, gas company, or natural gas supplier from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

(d) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any tenant of an apartment house subject to an order appointing a receiver pursuant to this section shall be found, after due notice and hearing, to be in contempt of court.

(Sept. 13, 1980, D.C. Law 3-94, § 4, 27 DCR 3500; May 9, 2000, D.C. Law 13-107, § 202(b), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 20(b), 51 DCR 10549.)

Cross references. — Water and sewer services, receiver for rental property, see § 34-2304.

Section references. — This section is referred to in § 42-3302.

Prior Codifications. — 1981 Ed., § 43-543.

Effect of amendments. — D.C. Law 13-107 in subsec. (a)(1) substituted “company, electric company, electricity supplier, or gas company (any of which shall be referred to as ‘company’) for service” for “electric or gas company for utility service”; substituted in the second sentence of subsec. (a)(3) “electric company, electricity supplier, or gas company” for “utility”; rewrote the second and third sentences of subsec. (a)(4) which formerly provided: “The receiver shall pay the utility company from such rents and payments for utility services provided by such company on and after the date of his appointment. The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the Court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver; provided, however, that no such fees or costs shall be turned over until after payment of current utility bills on the apartment house has been made.”; substituted in subsec. (b) “electric company, electricity supplier, or gas” for “utility” and, in subsec. (c) substituted “electric company, electricity supplier, or gas company” for “utility company”.

D.C. Law 15-227, in subsec. (a), substituted “electric company, electricity supplier, gas com-

pany, or natural gas supplier” for “electric company, electricity supplier, or gas company” in the second sentence of par. (3), rewrote the second and third sentences of par. (4), which had read: “The receiver shall pay the electric company, electricity supplier, or gas company from the rents and payments for services provided the company on and after the date of his appointment. The owner, agent, lessor or manager shall be liable for the reasonable fees and costs determined by the Court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver; provided, however, that no fees or costs shall be turned over until after payment of current electric company, electricity supplier, or gas bills on the apartment house has been made.”; and, in subsecs. (b) and (c), substituted “gas company, or natural gas supplier” for “or gas company”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(b) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 3-94. — For legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 42-3302.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 42-3302.

CASE NOTES

ANALYSIS

Contempt.
 Delegation of authority.
 Improper attempt to collect rent.
 In general.
 Purpose.
 Sanctions.
 Summary suit for possession.

Contempt.

Landlord would be held in contempt for attempting to collect rent in violation of a receivership order for a master-metered apartment building, where landlord repeatedly violated receivership order, which he had countersigned, after unsuccessfully seeking authority from receiver to prosecute nonpayment actions, and he intentionally insulated himself from readily available legal advice concerning the reach of the receivership order. *Knott v. Patten*, 135 WLR 385 (Super. Ct. 2007).

Superior court would give great, even if not necessarily determinative, weight to clear statement of legislative intent that any party or other entity found, after due notice and hearing, to have collected or attempted to collect rent in violation of a receivership order for a master-metered apartment building should be held in contempt. *Knott v. Patten*, 135 WLR 385 (Super. Ct. 2007).

Violation of the contempt provision of the Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act is not contempt; rather, statutory provision is properly understood as a strong legislative statement that a landlord or landlord's agent found to have collected or attempted to collect rent in violation of a court order appointing a receiver for a master-metered apartment building should be held in contempt for violating that order. *Lanier v. Stokes*, 134 WLR 2195 (Super. Ct. 2006).

Delegation of authority.

Receivership order did not permit receiver to delegate to owner of apartment master-metered building the authority to institute nonpayment actions against tenants; receivership statute could not be interpreted to permit extrajudicial delegation of authority that could result in rent money going into hands of the landlord, the very party that had proved itself not up to task of paying bills for vital utility services for its tenants. *Loewinger v. Stokes*, 977 A.2d 901, 2009 D.C. App. LEXIS 336 (2009).

Statute governing receiverships for master-metered apartment buildings precluded receiver from delegating to landlord the ability to

sue tenants for non-payment of rent. *Knott v. Patten*, 135 WLR 385 (Super. Ct. 2007).

Receiver's purported delegation of its authority to institute nonpayment actions against tenants was directly at odds with terms and legislative purpose of provision of the Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, permitting appointment of a receiver to collect rents from tenants. *Lanier v. Stokes*, 134 WLR 2195 (Super. Ct. 2006).

Improper attempt to collect rent.

A landlord's prosecution of action against tenant for nonpayment of rent in apartment master-metered building under receivership constitutes improper attempt to collect rent under receivership statute, even if action seeks only possession of premises, as opposed to money judgment for unpaid rent. *Loewinger v. Stokes*, 977 A.2d 901, 2009 D.C. App. LEXIS 336 (2009).

In general.

Receiver appointed due to failure of owner of apartment complex to pay utility bills is clothed with immunity when carrying out duties of its office. D.C. Code 1981, § 43-543. *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, 564 A.2d 49, 1989 D.C. App. LEXIS 183 (1989).

Receiver appointed due to landlord's failure to pay utility bills is a representative of the court accountable directly to the court in performance of its duties. D.C. Code 1981, § 43-543. *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, 564 A.2d 49, 1989 D.C. App. LEXIS 183 (1989).

Owner of apartment complex placed in receivership due to owner's failure to pay utility bills could petition court for accounting if there was reason to believe that receiver was negligent in performing its duties. D.C. Code 1981, § 43-543. *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, 564 A.2d 49, 1989 D.C. App. LEXIS 183 (1989).

Statute governing receiverships for master-metered apartment buildings divested landlord of his ability to sue tenants for non-payment of rent. *Knott v. Patten*, 135 WLR 385 (Super. Ct. 2007).

The requirement for service on the owner "at his last known address or by such other method as the Court may direct" cannot reasonably be interpreted to mean that attempted service without more, will suffice. *Potomac Elec. Power Co. v. Scoggins*, 110 WLR 2169 (Super. Ct. 1982).

Tenant association's bank account representing amount of rent due held to be "other funds" within the meaning of subsection (a)(4) of this section and therefore due to the receiver as

trustee. *Potomac Elec. Power Co. v. Scoggins*, 110 WLR 2169 (Super. Ct. 1982).

Purpose.

Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act of 1980, allowing unpaid utility company to petition the superior court for appointment of a receiver to collect rents from tenants, serves two legislative purposes: (1) it protects tenants who live in master-metered apartment buildings from the loss of utility services due to the landlord's failure to pay its utility bills, and (2) it protects utility companies from the loss of payment for services they are required by the statute to provide. *Loewinger v. Stokes*, 977 A.2d 901, 2009 D.C. App. LEXIS 336 (2009).

Provision of the Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, permitting appointment of a receiver to collect rents from tenants, serves two legislative purposes: it protects tenants who live in the master-metered apartment buildings from the loss of utility services due to the landlord's failure to pay its utility bills, and it protects utility companies from the loss of payment for services they are required by statute to provide. *Lanier v. Stokes*, 134 WLR 2195 (Super. Ct. 2006).

Sanctions.

Requirement that law firm, and its principal

file a statement, indicating whether firm was currently prosecuting any nonpayment actions with respect to rental properties subject to receivership orders, and certifying that its employees, and clients with rental property in district were provided written statement explaining, among other things, the receivership statute, was proper sanction for firm's contumacious conduct by assisting its client in prosecuting nonpayment actions, in violation of terms of receivership order, if not oral agreement firm reached with court-appointed receiver. *Loewinger v. Stokes*, 977 A.2d 901, 2009 D.C. App. LEXIS 336 (2009).

Summary suit for possession.

Receiver which had been appointed for several apartment buildings pursuant to Prohibition of Electric and Gas Utility Service Termination to Master-Metered Apartment Building Act, due to landlord's failure to pay utility bills, could institute summary suit for possession in landlord and tenant branch of the superior court in order to obtain rental payments from tenants, but only if landlord was joined as indispensable party-plaintiff. D.C. Code 1981, §§ 16-1501, 16-1503, 43-543, 43-543(a)(4); Civil Rule 19(a). *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812, 1983 D.C. App. LEXIS 525 (1983).

§ 42-3304. Penalties.

Any wilful or malicious violation of this chapter by any owner, agent, lessor, manager or any electric company, electricity supplier, gas company, or natural gas supplier shall be punishable by a fine of not more than \$500 or imprisonment for not more than 30 days, or both.

(Sept. 13, 1980, D.C. Law 3-94, § 5, 27 DCR 3500; May 9, 2000, D.C. Law 13-107, § 202(c), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 20(c), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-544.

Effect of amendments. — D.C. Law 13-107 in lieu of "utility company" substituted "electric company, electricity supplier, or gas company".

D.C. Law 15-227 substituted "gas company, or natural gas supplier" for "or gas company".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(c) of Prevention of Unauthorized Switching of Customer Natural Gas Accounts

Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 3-94. — For legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 42-3302.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 42-3302.

§ 42-3305. Exclusiveness of remedy.

Nothing in this chapter shall be construed to prevent the tenant of such

apartment house from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor, manager or company.

(Sept. 13, 1980, D.C. Law 3-94, § 6, 27 DCR 3500.)

Prior Codifications. — 1981 Ed., § 43-545. legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.
Legislative history of Law 3-94. — For

§ 42-3306. Findings required prior to termination of service.

(a) It shall be unlawful for any electric company, electricity supplier, gas company, or natural gas supplier to terminate service at the request of the owner, agent, lessor, or manager of an apartment house subject to this chapter, unless the Public Service Commission first makes a finding that all units within the apartment house are not lawfully occupied, or the Public Service Commission finds that services provided by such company shall be provided by other means.

(b) Nothing in this section shall be construed to relieve any owner, agent, lessor, or manager of an apartment house from liability under a contract for the provision of services with an electric company, electricity supplier, gas company, or natural gas supplier until such time as the Public Service Commission makes its findings as required by subsection (a) of this section.

(Sept. 13, 1980, D.C. Law 3-94, § 7, 27 DCR 3500; May 9, 2000, D.C. Law 13-107, § 202(d), 47 DCR 1091; Mar. 16, 2005, D.C. Law 15-227, § 20(d), 51 DCR 10549.)

Prior Codifications. — 1981 Ed., § 43-546.

Effect of amendments. — D.C. Law 13-107 substituted “electric company, electricity supplier, or gas company” for “gas or electric company”.

D.C. Law 15-227 substituted “gas company, or natural gas supplier” for “or gas company”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(d) of Prevention of Unauthorized

Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Legislative history of Law 3-94. — For legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.

Legislative history of Law 13-107. — For Law 13-107, see notes following § 42-3302.

Legislative history of Law 15-227. — For Law 15-227, see notes following § 42-3302.

§ 42-3307. Regulations.

The Public Service Commission shall adopt regulations necessary to carry out the purposes of this chapter. Such regulations shall include, but not be limited to, establishing procedures by which the company shall notify tenants of an affected apartment house that monies are owed the company.

(Sept. 13, 1980, D.C. Law 3-94, § 8, 27 DCR 3500.)

Prior Codifications. — 1981 Ed., § 43-547. legislative history of D.C. Law 3-94, see Historical and Statutory Notes following § 42-3301.
Legislative history of Law 3-94. — For

CHAPTER 34. RENTAL HOUSING CONVERSION AND SALE.

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42-3401.02. Purposes.	42-3404.09. Single-family accommodations.
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42-3401.04. Applicability of Rental Housing Act of 1985.	42-3404.11. Accommodations with 5 or more units.
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Subchapter I. Findings; Purposes; Definitions.

§ 42-3401.01. Findings.

(a) The Council of the District of Columbia finds that:

- (1) There is a continuing housing crisis in the District of Columbia.
- (2) There is a severe shortage of rental housing available to the citizens of the District of Columbia. The percentage of all rental housing units within the District of Columbia which are vacant, habitable, and available for occupancy

is less than 5% which is generally considered an indication of a serious shortage of rental housing units. The vacancy rate is substantially lower among units which can be afforded by lower income tenants as evidenced by serious overcrowding in private units and waiting lists for public housing in excess of 5,000 households.

(3) Conversion of rental units to condominiums or cooperatives depletes the rental housing stock. Since 1977, more than 8,000 rental units in the District of Columbia have been converted to condominiums or cooperatives, more than 9,000 additional units have not yet been converted but have been declared eligible to do so and applications for 6,000 more units are pending. The 8,000 units which have been converted represent 4.5% of the District of Columbia's 1977 rental stock, and the 15,000 units subject to conversion represent an additional 8.3%. These trends have been thoroughly investigated and documented by two legislative study commissions: The D.C. Legislative Commission on Housing and the Emergency Commission on Condominium and Cooperative Conversion. The latter Commission reported policy proposals, many of which are contained in this chapter.

(4) Lower income tenants, particularly elderly and disabled tenants, are the most adversely affected by conversions since the after conversion costs are usually beyond their ability to pay, which results in forced displacement, serious overcrowding, disproportionately high housing costs, and the loss of additional affordable rental housing stock. The threat of conversion has caused widespread fear and uncertainty among many tenants, particularly lower income, elderly, and disabled tenants.

(5) The District of Columbia housing assistance plan shows that 43,521 renter households and 14,215 homeowner households are in need of housing assistance in the District.

(6) Very few rental units are being constructed or vacant units being made available for rental occupancy. More units are being converted to other uses or demolished than are being made available for rent.

(7) Experience with conversions since passage of the Condominium Act of 1976 and the Condominium and Cooperative Stabilization Act of 1979 (D.C. Law 3-53) has demonstrated that the previous conversion controls have not been sufficiently effective in preserving rental housing, particularly for those who cannot afford homeownership. Based on that experience and the conclusions of the legislative study commissions, tenants who are most directly affected by the conversion should be provided with sufficient accurate information about the relative advantages and disadvantages to conversion of rental housing and should have a voice in the decision whether or not their rental housing should be converted. These controls are necessary to more effectively assure that housing will be preserved at a cost which can be afforded by current tenants who would otherwise be involuntarily displaced and forced into overcrowded or otherwise substandard housing conditions.

(8) These additional conversion controls are required to preserve the public peace, health, safety, and general welfare.

(b) In enacting the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since the passage of this chapter.

(2) The chapter, as amended by the Rental Conversion and Sale Act of 1980 Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Conversion and Sale Act Amendment Act of 1981 (D.C. Law 4-27), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter, with additional amendments to address minor problems which have been identified since its passage, should be extended for 5 more years.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(c) In enacting the Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since passage of this chapter.

(2) The chapter, as amended by the Rental Housing Act of 1985 (D.C. Law 6-10), the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983 (D.C. Law 5-38), the Rental Conversion and Sale Act Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter should be extended until September 6, 1995, and thereafter by subsection (d)(4) of this section.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(d) In enacting the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995, the Council of the District of Columbia finds that:

(1) The District of Columbia continues to face an ongoing housing crisis and will continue to face such a crisis for the foreseeable future. The well publicized and well documented District budget crisis has meant that the limited ability of the District government to meaningfully address the housing crisis has been further eroded.

(2) The Rental Housing Conversion and Sale Act of 1980, as amended ("this chapter"), has generally been successful in meeting its stated purposes and needs to be continued in effect in light of the ongoing housing and budget crises.

(3) A number of assumptions upon which this chapter was based have changed in light of the almost 15 years of experience since this chapter first went into effect. In continuing this chapter, the Council intends the amendments reflected in this extension to address these changes.

(4) This chapter should be continued into the future so long as the underlying housing crisis continues as declared annually by the Mayor pursuant to § 42-3405.12.

(5) This extension is required to preserve the public peace, health, safety, and general welfare.

(Sept. 10, 1980, D.C. Law 3-86, § 101, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(a), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(a), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(a), 42 DCR 3239; Nov. 16, 2006, D.C. Law 16-179, § 2(a), 53 DCR 6698.)

Cross references. — Tax liens successor, protection under provisions of this chapter, see § 47-1303.4.

Prior Codifications. — 1981 Ed., § 45-1601.

Effect of amendments. — D.C. Law 16-179, in subsec. (a)(4), in the first sentence, substituted “elderly and disabled” for “elderly”, and, in the second sentence, substituted “lower income, elderly, and disabled” for “lower income and elderly”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988 (D.C. Law 7-140, September 21, 2008, law notification 35 DCR 7279).

For temporary (225 day) amendment of section, see § 2(a) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1993 (D.C. Law 10-13, September 11, 1993, law notification 40 DCR 6835).

For temporary (225 day) amendment of section, see § 2(a) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendments of section, see § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1993 (D.C. Act 10-29, May 19, 1993, 40 DCR 3418) and § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Congressional Recess Emergency Amendment Act of 1993 (D.C. Act 10-82, August 4, 1993, 40 DCR 6056).

For temporary amendment of section, see § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Re-

enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837-8).

Legislative history of Law 3-86. — Law 3-86, the “Rental Housing Conversion and Sale Act of 1980,” was introduced in Council and assigned Bill No. 3-222, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — Law 7-154, the “Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-462, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 16-179. — Law 16-179, the “Low-Income Disabled Tenant Rental Conversion Protection Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-724, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 21, 2006, it was assigned Act No. 16-457 and transmitted to both Houses of Congress for its review. D.C. Law 16-179 became effective on November 16, 2006.

References in text. — The “Rental Housing Conversion and Sale Act of 1980 Amendments

and Extension Act of 1983,” referred to in the introductory language of (b), is D.C. Law 5-38.

The “Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988,” referred to in the introductory language of (c), is D.C. Law 7-154.

Editor’s notes. — Amendment of section by Law 10-144:

Section 2(a) of D.C. Law 10-144 purported to amend this section by adding (d) to read as follows:

“In enacting the Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994, the Council of the District of Columbia finds that:

“(1) The District of Columbia continues to face an ongoing housing crisis and will continue to face such a crisis for the foreseeable future. The well publicized and well documented District budget crisis has meant that the limited ability of the District government to meaningfully address the housing crisis has been further eroded.

“(2) The Rental Housing Conversion and Sale Act of 1980, as amended (“chapter”), has generally been successful in meeting its stated purposes and needs to be continued in effect in light of the ongoing housing and budget crises.

“(3) A number of assumptions upon which this chapter was based have changed in light of the almost 14 years of experience since this chapter first went into effect. In continuing this chapter, the Council intends the amendments reflected in this extension to address these changes.

“(4) The chapter should be continued into the future so long as the underlying housing crisis

continues as declared annually by the Mayor pursuant to § 45-1662.

“(5) This extension is required to preserve the public peace, health, safety, and general welfare.”

The provisions of D.C. Law 10-144 cannot be given effect, however, as that act amends provisions of D.C. Law 3-86 which had expired pursuant to § 45-1601(c)(3) 1981 Ed. and D.C. Law 10-13, the Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993.

Reenactment of Law 3-86: Section 2 of D.C. Law 10-176 temporarily reestablished the Rental Housing Conversion and Sale Act of 1980 as it existed on April 23, 1994. Section 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904) provided for the temporary reenactment into law of D.C. Law 3-86 as it existed on April 23, 1994.

For provisions reestablishing D.C. Law 3-86 as it existed on April 23, 1994, see § 2 of D.C. Law 11-31.

Reenactment of Law 3-86: Section 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837) provide for the temporary reestablishment as law of D.C. Law 3-86 as it existed on April 23, 1994.

CASE NOTES

ANALYSIS

Construction and application.

Inverse condemnation claims.

Jurisdiction of federal court.

Laches.

RICO claims.

Validity.

Construction and application.

Rental Housing Conversion and Sale Act guarantees District of Columbia tenants opportunity to purchase property on which they reside when owner places property on market for sale. D.C. Code 1981, § 45-1601 et seq. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Purchaser of rented home was not required to specify in his contract for sale that there would be certain limitations on the rights of the tenant; Rental Housing Conversion and Sale Act was specific on the legally enforceable rights of a tenant, and there was nothing more

to add where contract provided it was subject to statutory rights. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Statute purporting to clarify earlier legislation under which landlord was required to grant certain purchase rights to tenants in the event residential property was sold, so as to ensure that requirements of earlier statute would be deemed to apply to long-term leases, not reflect legislative intent that term “sale,” as used in original statute, contemplated lease arrangements. D.C. Code 1981, §§ 45-1601 et seq., 45-1631(b). *West End Tenants Ass’n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

For purposes of determining whether statute conferring rights on tenants to purchase their building in event of contemplated sale of building, as applied to master lease agreement covering building, violated the contract clause rights of lessor and lessee, agreement would be deemed to substantially impair contractual obligations; parties had reasonable expectation

that they could obtain benefits bargained for under contract, as there had been no prior history of government regulations of apartment building leases. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 45-1601 et seq., 45-1631(b). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Rental Housing Conversion and Sale Act envisioned that tenant organization could establish reasonable rules governing its memberships, and thus, tenant organization had power to terminate membership of member of association. D.C. Code 1981, §§ 45-1601 to 45-1663. *Raskauskas v. Temple Realty Co.*, 589 A.2d 17, 1991 D.C. App. LEXIS 73 (1991).

Inverse condemnation claims.

Cause would be remanded for further proceedings on property owners' claim that enactment of statute conditioning condominium conversion upon approval of majority vote of eligible tenants and effecting "delays though the use of illegal ordinances" took property for public use without just compensation in violation of Fifth Amendment; cases had come before superior court on district's motion for summary judgment, statements regarding facts filed by district and property owners addressed statutory claims alone and did not address factual context of issue of uncompensated taking, and owners were not put on notice that they were required to submit materials from which court might find that genuine issue of material fact existed regarding uncompensated taking issue. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amend. 5. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

Jurisdiction of federal court.

Upon district court's dismissal of claim by real estate developer and its broker against tenants' association, association's president, and association's attorneys for violation of Racketeer Influenced and Corrupt Organizations Act (RICO), district court had to either remand pendent common-law claims for tortious interference with contract, abuse of process, and malicious prosecution to District of Columbia Superior Court, or dismiss without prejudice so that developer would have opportunity to file claims again in District of Columbia, where common-law claims raised novel or complex issues, district court had invested virtually no time on any issues left to be resolved in case, and there seemed little difference in convenience for parties whether they litigated in District of Columbia courts or federal court. 18 U.S.C. §§ 1961, 1962(c, d); 18 U.S.C. § 1367(c). *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1995 U.S. App. LEXIS 4670 (C.A.D.C. 1995).

Federal court had federal question and civil rights jurisdiction over complaint which alleged that District of Columbia violated apartment owners' rights under the due process and equal protection clauses by refusing to permit the conversion of the building into condominiums by the enacting of successive and illegal emergency measures prohibiting conversion and by impermissibly delegating to the tenants of the building the power to prohibit conversion and which alleged that the District, through all of its actions, had unlawfully taken the owners' property without just compensation. *Silverman v. Barry*, 727 F.2d 1121, 1984 U.S. App. LEXIS 25730 (C.A.D.C. 1984).

Where statutory scheme under which protected property right was claimed established that plaintiffs were entitled to rent certificates which they sought and without which they could not convert their apartments into condominiums and where statute defined in precise quantitative terms those apartments which could qualify for the certificates and subsequent conversion, there were no ambiguous questions of local law whose resolution might modify or moot the due process claims so as to warrant abstention. *Silverman v. Barry*, 727 F.2d 1121, 1984 U.S. App. LEXIS 25730 (C.A.D.C. 1984).

Laches.

Real estate developer whose attempt to purchase apartment building was blocked when tenants association attempted to exercise its right of first refusal under District of Columbia law was barred from pursuing claims for tortious interference with contractual relations, abuse of process and malicious prosecution against association and its attorneys under doctrine of laches and in interest of finality of judgment; developer could have pursued its claims in building owner's initial declaratory judgment action to clear title, but instead attempted to settle with association. D.C. Code 1981, § 45-1601 et seq. *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 829 F. Supp. 420, 1993 U.S. Dist. LEXIS 10616 (1993), remanded by 48 F.3d 1260, 310 U.S. App. D.C. 409, 1995 U.S. App. LEXIS 4670, RICO Bus. Disp. Guide P8843 (1995).

RICO claims.

Claim by real estate developer and its broker that future threat was posed by alleged activity of tenants' association, association's president, and association's attorneys in seeking to prevent or delay sale of apartment building or to secure "ransom" for allowing sale to proceed had no apparent basis, for purpose of determining whether those defendants had engaged in "pattern of racketeering activity" under Racketeer Influenced and Corrupt Organizations Act (RICO), where there was nothing to suggest

any reason to expect that same defendants, together or separately, would again engage in RICO-violating conduct; only possible rationale that could support such prediction, that once one is a RICO violator one will always be a RICO violator, would deprive pattern requirement of all meaning by establishing open-ended continuity whenever two or more predicated acts were shown. 18 U.S.C. §§ 1961(1, 5), 1962(c). *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1995 U.S. App. LEXIS 4670 (C.A.D.C. 1995).

Alleged acts of tenants' association, association's president, and association's attorneys to prevent or delay sale of apartment building or secure ransom for allowing sale to proceed did not demonstrate "pattern of racketeering activity" based on closed period of continuous criminal activity, and, thus, real estate developer and its broker failed to state claim against those defendants under Racketeer Influenced and Corrupt Organizations Act (RICO), where scheme entailed but single discrete injury consisting of loss of sale or payment of ransom and injury was suffered by only three victims, even though developer and broker alleged 15 predicate acts during three-year period. 18 U.S.C. §§ 1961(1, 5), 1962(c). *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1995 U.S. App. LEXIS 4670 (C.A.D.C. 1995).

Claim by real estate developer and its broker against tenants' association, association's president, and association's attorneys for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy failed to state claim, where their allegations provided no basis for inferring any conspiracy broader than defendants' alleged scheme to prevent or delay sale of apartment building or to secure "ransom" for allowing sale to proceed. 18 U.S.C. § 1962(c, d). *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1995 U.S. App. LEXIS 4670 (C.A.D.C. 1995).

Tenants association did not engage in a pattern of racketeering activity necessary to support real estate developer's Racketeer Influenced and Corrupt Organizations Act (RICO) claim against association and its attorneys when association attempted to exercise its right of first refusal under District of Columbia consumer protection laws in order to block developer's purchase of apartment building. 18 U.S.C. § 1962(c); D.C. Code 1981, § 45-1601 et seq. *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 829 F. Supp. 420, 1993 U.S. Dist. LEXIS 10616 (1993), remanded by 48 F.3d 1260, 310 U.S. App. D.C. 409, 1995 U.S. App. LEXIS 4670, RICO Bus. Disp. Guide P8843 (1995).

Validity.

District of Columbia legislation pursuant to police power, generally prohibiting condominium and cooperative conversions of apartment buildings but delegating to a majority of tenants authority to waive that prohibition pursuant to tenant election, did not violate due process rights of apartment owners on theory of impermissibly delegating governmental authority to private citizens. U.S. Const. Amends. 5, 14; D.C. Code 1981, §§ 45-1601 et seq., 45-1602(1), 45-1611(a)(1), 45-1612(i). *Silverman v. Barry*, 845 F.2d 1072, 1988 U.S. App. LEXIS 5854 (C.A.D.C. 1988), writ of certiorari denied by 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383, 1988 U.S. LEXIS 5092, 57 U.S.L.W. 3347 (1988).

Statute conditioning condominium conversion upon approval of majority vote of eligible tenants did not violate due process rights of property owners on theory the tenant consent requirement impermissibly delegated legislative authority to private citizens without providing standards for granting or withholding of consent. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amends. 5, 14. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

§ 42-3401.02. Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
- (2) To preserve rental housing which can be afforded by lower income tenants in the District;
- (3) To prevent lower income elderly and disabled tenants from being involuntarily displaced when their rental housing is converted;
- (4) To provide incentives to owners, who convert their rental housing, to

enable low income non-elderly and non-disabled tenants to continue living in their current units at costs they can afford;

(5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;

(6) To encourage the formation of tenant organizations;

(6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and

(7) To authorize necessary actions consistent with the findings and purposes of this chapter.

(Sept. 10, 1980, D.C. Law 3-86, § 102, 27 DCR 2975; Sept. 6, 1995, D.C. Law 11-31, § 3(b), 42 DCR 3239; Nov. 16, 2006, D.C. Law 16-179, § 2(b), 53 DCR 6698.)

Prior Codifications. — 1981 Ed., § 45-1602.

Effect of amendments. — D.C. Law 16-179, in par. (3), substituted “elderly and disabled” for “elderly”; and, in par. (4), substituted “non-elderly and non-disabled” for “non-elderly”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 16-179. — For Law 16-179, see notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2 (b) of D.C. Law 10-144 purported to amend this section by inserting (6A) to read as follows: “In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes: (6A) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and”.

CASE NOTES

ANALYSIS

Construction and application.
Validity.

Construction and application.

District of Columbia Rental Housing Conversion and Sale Act, which entitles tenants to purchase rental property, requires tenants to purchase entire property rather than just one or two buildings. D.C. Code 1981, §§ 45-1602(1), 45-1661. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Overarching purpose of the Tenant Opportunity to Purchase Act (TOPA) is to protect tenant rights. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Rental Housing Conversion and Sale Act's overarching purpose is to protect tenant rights by strengthening the bargaining position of tenants and discouraging the displacement of tenants through conversion or sale of rental property. *Medrano v. Osterman*, 885 A.2d 310, 2005 D.C. App. LEXIS 534 (2005).

The only rights accorded to anyone under the Rental Housing Conversion and Sale Act are

rights that are enforceable by a tenant. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Validity.

District of Columbia legislation pursuant to police power, generally prohibiting condominium and cooperative conversions of apartment buildings but delegating to a majority of tenants authority to waive that prohibition pursuant to tenant election, did not violate due process rights of apartment owners on theory of impermissibly delegating governmental authority to private citizens. U.S. Const. Amends. 5, 14; D.C. Code 1981, §§ 45-1601 et seq., 45-1602(1), 45-1611(a)(1), 45-1612(i). *Silver-*

man v. Barry, 845 F.2d 1072, 1988 U.S. App. LEXIS 5854 (C.A.D.C. 1988), writ of certiorari denied by 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383, 1988 U.S. LEXIS 5092, 57 U.S.L.W. 3347 (1988).

Statute conditioning condominium conversion upon approval of majority vote of eligible tenants did not violate due process rights of property owners on theory the tenant consent requirement impermissibly delegated legislative authority to private citizens without providing standards for granting or withholding of consent. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amends. 5, 14. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

§ 42-3401.03. Definitions.

As used in this chapter, the term:

- (1) "Condominium" has the same meaning as in § 42-1901.02(4).
- (2) "Condominium Act" means the Condominium Act of 1976 (§ 42-1901.01 et seq.).
- (3) "Condominium conversion" is the issuance of notice of filing pursuant to § 42-1904.06(a).
- (4) "Conversion" shall include cooperative conversions and condominium conversions as defined in this chapter.
- (5) "Cooperative" means a cooperative legally incorporated pursuant to the District of Columbia Cooperative Association Act (§ 29-901 et seq.) or a cooperative corporation incorporated in another jurisdiction for the primary purpose of owning and operating real property in which its members reside.
- (6) "Cooperative Act" means the District of Columbia Cooperative Association Act (§ 29-901 et seq.).
- (7) "Cooperative conversion" is the filing of articles of incorporation pursuant to the Cooperative Act, or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order.
- (8) "District" means the District of Columbia government.
- (9) "Head of household" means a tenant who maintains the affected rental unit as the tenant's principal place of residence, is a resident and domiciliary of the District of Columbia, and contributes more than one-half of the cost of maintaining the rental unit. If no member of a household contributes more than one-half of the cost of maintaining the rental unit, the members of the household who maintain the affected rental unit as their principal place of residence are residents and domiciliaries of the District of Columbia, and contribute to the cost of maintaining the rental unit, may designate one of themselves as the head of household. An individual may be considered a head of household for the purposes of this chapter without regard to whether the individual would qualify as a head of household for the purpose of any other law.
- (10) "Division" means the Rental Accommodations Division established by § 42-3502.03 or the Rental Conversion and Sale Division established by § 42-3502.04a.

(11) “Housing accommodation” or “accommodation” means a structure in the District of Columbia containing 1 or more rental units and the appurtenant land. The term does not include a hotel, motel, or other structure used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy if the owner or other person or entity entitled to receive rents is subject to the sales tax imposed by § 47-2001(n)(1)(C) and the occupant of the rental unit has been in occupancy for less than 15 days.

(12) “Low-income” means a household with a combined annual income, in a manner to be determined by the Mayor, which may include federal income tax returns where applicable, totaling less than the following percentages of the lower income guidelines established pursuant to § 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f) for a family of 4 for the Washington Standard Metropolitan Statistical Area (SMSA), as the median is determined by the United States Department of Housing and Urban Development and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes by local or regional government agencies:

one-person household	50%
two-person household	60%
three-person household or a 1 or	
2 person household containing a	
person who is 62 years of age or	
older or who has a disability	90%
four-person household	100%
five-person household	110%
more than 5 person household	120%

(13) “Mayor” means the Mayor of the District of Columbia or the designated representative of the Mayor.

(14) “Owner” means an individual, corporation, association, joint venture, business entity and its respective agents, who hold title to the housing accommodation unit or cooperative share.

(15) “Rental Housing Act” means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; § 42-3501.01 et seq.), or any successor rent control act.

(16) “Rental unit” or “unit” means only that part of a housing accommodation which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, suite of rooms, and single-family home or duplex, and the appurtenant land to such rental unit.

(17) “Tenant” means a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or benefits of a rental unit within a housing accommodation. If the names of 2 or more persons appear on a rental agreement, those persons shall determine which person may exercise a vote under this chapter. The singular term “tenant” includes the plural.

(18) “Tenant organization” means an organization that represents at least a majority of the heads of household in the housing accommodation excluding those households in which no member has resided in the housing accommo-

dation for at least 90 days and those households in which any member has been an employee of the owner during the preceding 120 days.

(Sept. 10, 1980, D.C. Law 3-86, § 103, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(a), 28 DCR 326; Sept. 6, 1995, D.C. Law 11-31, § 3(c), 42 DCR 3239; July 22, 2005, D.C. Law 16-15, § 2(a), 52 DCR 6885; Apr. 24, 2007, D.C. Law 16-305, § 65, 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-366, § 2(a), 56 DCR 1332.)

Cross references. — Recipients of financial assistance from Home Purchase Assistance funds as tenant organizations, see § 42-2604.

Prior Codifications. — 1981 Ed., § 45-1603.

Effect of amendments. — D.C. Law 16-15, in par. (17), added the second sentence.

D.C. Law 16-305, in par. (12), substituted “has a disability” for “is handicapped”.

D.C. Law 17-366 rewrote par. (10), which had read as follows: “(10) ‘Household’ means all of the persons living in a rental unit.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

For temporary (225 day) amendment of section, see § 3 of Tenant Protection Temporary Amendment Act of 2000 (D.C. Law 13-158, September 16, 2000, law notification 47 DCR 8064).

Emergency legislation. — For temporary amendment of section, see § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

For temporary (90-day) addition of § 45-1604 1981 Ed., see § 3 of the Tenant Protection Emergency Amendment Act of 2000 (D.C. Act 13-328, May 9, 2000, 47 DCR 4347).

For temporary (90-day) addition of § 45-1604 1981 Ed., see § 3 of the Tenant Protection Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-411, August 14, 2000, 47 DCR 7285).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-131. — Law 3-131, the “Rental Housing Act of 1980,” was introduced in Council and assigned Bill No. 3-321, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first and second readings on November 12, 1980, November 25, 1980, and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-340 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 16-15. — Law 16-15, the “Rental Housing Conversion and Sales Amendment Act of 2005,” was introduced in Council and assigned Bill No. 16-50, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 5, 2005, and May 3, 2005, respectively. Signed by the Mayor on May 26, 2005, it was assigned Act No. 16-89 and transmitted to both Houses of Congress for its review. D.C. Law 16-15 became effective on July 22, 2005.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 17-366. — Law 17-366, the “Housing Regulation Administration Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-979 which was referred to the Committee on Housing and Public Affairs. The Bill was adopted on first and second readings on November 18, 2008, and December 16, 2008, respectively. Approved without the signature of the Mayor on January 23, 2009, it was assigned Act No. 17-701 and transmitted to both Houses of Congress for its review. D.C. Law 17-366 became effective on March 25, 2009.

Editor’s notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(c) of D.C. Law 10-144 purported to amend (7) and (15) to read as follows:

“As used in this chapter, the term:

“(7) ‘Cooperative conversion’ is the filing of articles of incorporation pursuant to the Cooperative Act, or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order.”

“(15) ‘Rental Housing Act’ means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Code § 45-2501 et seq.), or any successor rent control act.”

CASE NOTES

ANALYSIS

In general.

Standing.

Tenant.

Tenant organization.

In general.

Attorney's tenancy in mixed-use building was commercial, rather than residential, contrary to attorney's contention that he was a residential tenant with a statutory right to purchase the premises, for purposes of lessor's action for possession, where attorney listed the premises as his business address and maintained a separate residence. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Standing.

Tenant associations lacked standing to bring suit against owner of buildings under Tenants Opportunity to Purchase Act (TOPA), absent evidence that associations represented at least half of the qualifying heads of households in buildings at time suit was filed. *Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590, 2011 D.C. App. LEXIS 157 (2011).

Tenant.

Tenant was not entitled to possession of rented premises on effective date of statute prohibiting eviction of disabled tenants during apartment-to-condominium conversion, and thus statute did not apply to prevent tenant's eviction after her refusal during conversion to either purchase or vacate premises, even though tenant had not been evicted at time statute went into effect; at time statute went into effect, tenant's right to occupy the premises had ended, due to expiration of statutory 120-day period to vacate after conversion, and landlord had chosen to treat her as an unlawful holdover tenant by filing an eviction action. *Redman v. Potomac Place Assocs., LLC*, 972 A.2d 316, 2009 D.C. App. LEXIS 166 (2009), writ of certiorari denied by 558 U.S. 1121, 130 S. Ct. 1071, 175 L. Ed. 2d 900, 2010 U.S. LEXIS 237, 78 U.S.L.W. 3392 (2010).

Daughter of deceased tenant would be granted intervention as a matter of right in Housing Authority's in rem action to recover possession of housing unit, as daughter had continued to live in unit since tenant's death

and had paid rent and thus had an interest in the transaction which was the subject matter of the suit, eviction of daughter would impede her ability to protect that interest, and there were no other parties to the action which could protect daughter's interest. *McPherson v. D.C. Hous. Auth.*, 833 A.2d 991, 2003 D.C. App. LEXIS 619 (2003).

Occupant timely filed a motion to intervene as of right in bank's action for possession of a foreclosed house, where occupant filed motion three months after the complaint for possession was brought, occupant twice visited the court and spoke with the bank's attorney after learning of the suit, and occupant would have a defense to the action if she was a “tenant” occupying a “rental unit” within the meaning of the Rental Housing Act (RHA). *Robinson v. First Nat'l Bank of Chicago*, 765 A.2d 543, 2001 D.C. App. LEXIS 10 (2001).

In bank's action for possession of foreclosed house, remand was required for a determination of whether house's occupant was a “tenant” occupying a “rental unit” within the meaning of the Rental Housing Act (RHA), for purposes of determining whether she should be allowed to intervene as of right. *Robinson v. First Nat'l Bank of Chicago*, 765 A.2d 543, 2001 D.C. App. LEXIS 10 (2001).

Tenant organization.

Even if tenants subsequently moved out of buildings that were the subject of lawsuit brought by tenant organizations against builder owners, so that the associations no longer represented a majority of tenants at the time that their lawsuits were instituted, associations still had standing to bring claim under Tenants Opportunity to Purchase Act (TOPA); at time lawsuit was filed, associations represented a majority of heads of households in buildings. *Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590, 2011 D.C. App. LEXIS 157 (2011).

Tenants' association lacked standing as a “tenant organization” to bring action against apartment building owners under the Rental Housing Conversion and Sale Act, as association had not obtained signed membership forms from a majority of the eligible tenants and had not registered with the Mayor. *Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., L.P.*, 894 A.2d 1113, 2006 D.C. App. LEXIS 143 (2006).

§ 42-3401.04. Applicability of Rental Housing Act of 1985.

For purposes of this chapter, the provisions of § 42-3505.01(n) shall apply. (Sept. 10, 1980, D.C. Law 3-86, § 104, as added Apr. 27, 2001, D.C. Law 13-281, § 302, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, § 30, 49 DCR 8140.)

Effect of amendments. — D.C. Law 14-213 validated a previously made technical correction.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Editor's notes. — Section 601 of D.C. Law 13-281 provided: "The Mayor may issue rules to implement the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 in accordance with the District of Columbia Administrative Procedure Act."

Subchapter II. Conversion Procedures.

§ 42-3402.01. Short title.

This subchapter may be cited as the "Conversion of Rental Housing to Condominium or Cooperative Status Act of 1980".

(Sept. 10, 1980, D.C. Law 3-86, § 201, 27 DCR 2975.)

§ 42-3402.02. Conversions.

(a) *Prerequisite.* —

(1) An owner shall not convert a housing accommodation into a condominium or a cooperative until the Mayor certifies compliance with the provisions of this chapter.

(2) Only an owner may request a tenant election to convert, send notice of intent to convert, or convert an accommodation. Certification of a conversion by the Mayor is not transferable to a subsequent owner. An owner who has issued a notice to vacate for the immediate purpose of discontinuing the housing use and occupancy of a rental unit pursuant to § 42-3505.01(i)(1)(A), or a purchaser from such owner or successor in interest to such owner, may not request a tenant election to convert the housing accommodation in which the rental units are located.

(3) Certification by the Mayor is effective for 180 days; provided, that the Mayor shall extend the certification if a majority of the qualified voters consent. If the owner receives certification by the Mayor and does not convert within this period, the owner may not request another tenant election or certification by the Mayor for that accommodation for 1 year from the date of expiration of the prior certification.

(4) Once converted or established as a condominium or cooperative in a newly constructed building, the owner need not comply anew with the requirements of this chapter even if the condominium units or cooperative units have been occupied by tenants partially or exclusively, provided that each tenant has been given written notice, prior to occupying the unit, of the fact that the unit being rented is part of a condominium or cooperative or each

tenant who was not given notice waives the right in writing before or after occupancy or vacating the unit.

(b) *Exemption.* — With the Mayor's approval, owners who certify their intent to convert a housing accommodation to a nonprofit cooperative, with an appreciation of share value limited to a maximum of the annual rate of inflation, for low and moderate income persons as defined from time to time by the United States Department of Housing and Urban Development for the Washington Standard Metropolitan Statistical Area (SMSA) may be exempt from this subchapter. "Share value", for the purposes of this subsection, means the actual initial membership price plus the actual cost of any improvement to the unit paid by the member after board approval. Upon application, the Mayor may exempt owners described in this subsection prior to their taking title to the accommodations, provided that they have a valid contract to purchase the accommodation. The Mayor may exempt the owner from some or all the provisions of this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 202, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(b), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(b), 30 DCR 4866; Sept. 6, 1995, D.C. Law 11-31, § 3(d), 42 DCR 3239.)

Cross references. — Certificate or registration revocation, see § 42-3405.07.

Prior Codifications. — 1981 Ed., § 45-1611.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(d) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-3401.03.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Histor-

ical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Mayor's Orders. — Declaration of continuing housing crisis: See Mayor's Order 83-239, October 7, 1983.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144:

Section 2(d) of D.C. Law 10-144 purported to amend this section by adding (a)(4) to read as follows:

"(a) Prerequisite.

"(4) Once converted or established as a condominium or cooperative in a newly constructed building, the owner need not comply anew with the requirements of this chapter even if the condominium units or cooperative units have been occupied by tenants partially or exclusively, provided that each tenant has been given written notice, prior to occupying the unit, of the fact that the unit being rented is part of a condominium or cooperative or each tenant who was not given notice waives the right in writing before or after occupancy or vacating the unit."

CASE NOTES

ANALYSIS

Approval by tenants.
Inverse condemnation.
Validity.

Approval by tenants.

Provision of Rental Housing Conversion and Sale Act conditioning any proposed condominium conversion upon approval of majority vote of eligible tenants in tenant election unconstitutionally delegated to tenants absolute, unreviewable veto power over any condominium conversion; final decision had to be made by governmental agency according to some enunciated standards. D.C. Code 1981, §§ 45-1611, 45-1612. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

It was not necessary for apartment building owners to conduct tenant election on proposed condominium conversion, in order to raise claim that statute conditioning condominium conversion upon approval of majority vote of eligible tenants was facially unconstitutional in delegating to private citizens the legislative power granted by congress to district council. D.C. Code 1981, §§ 45-1611, 45-1612. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

Inverse condemnation.

Cause would be remanded for further proceedings on property owners' claim that enactment of statute conditioning condominium conversion upon approval of majority vote of eligible tenants and effecting "delays though the use of illegal ordinances" took property for public use without just compensation in violation of Fifth Amendment; cases had come before superior court on district's motion for summary judgment, statements regarding facts filed by district and property owners addressed statutory claims alone and did not address factual context of issue of uncompensated taking, and owners were not put on notice that they were

required to submit materials from which court might find that genuine issue of material fact existed regarding uncompensated taking issue. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amend. 5. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

There was fact issue as to whether alternative economic uses were available to apartment building owners, precluding summary judgment on claim that combined effect of local rent control and statute conditioning any proposed condominium conversion upon approval of majority vote of eligible tenancy in tenant election amounted to uncompensated taking of private property. D.C. Code 1981, §§ 45-1611, 45-1612; U.S. Const. Amend. 5. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

Validity.

District of Columbia legislation pursuant to police power, generally prohibiting condominium and cooperative conversions of apartment buildings but delegating to a majority of tenants authority to waive that prohibition pursuant to tenant election, did not violate due process rights of apartment owners on theory of impermissibly delegating governmental authority to private citizens. U.S. Const. Amends. 5, 14; D.C. Code 1981, §§ 45-1601 et seq., 45-1602(1), 45-1611(a)(1), 45-1612(i). *Silverman v. Barry*, 845 F.2d 1072, 1988 U.S. App. LEXIS 5854 (C.A.D.C. 1988), writ of certiorari denied by 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383, 1988 U.S. LEXIS 5092, 57 U.S.L.W. 3347 (1988).

Statute conditioning condominium conversion upon approval of majority vote of eligible tenants did not violate due process rights of property owners on theory the tenant consent requirement impermissibly delegated legislative authority to private citizens without providing standards for granting or withholding of consent. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amends. 5, 14. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

§ 42-3402.03. Tenant election.

(a) *Notice by owner.* — An owner who seeks to convert shall provide each tenant and the Mayor a written request for a tenant election by first class mail and post the request for an election in conspicuous places in common areas of the housing accommodation. The written request shall include, at a minimum, a summary of tenant rights and obligations, a list of tenant voter qualifications and disqualifications, and sources of technical assistance as published in the D.C. Register by the Mayor. If Spanish is the primary language of a head of

household, the owner shall provide a Spanish translation of the request to the head of household. An owner shall also provide the Mayor with a list of tenants residing in the housing accommodation.

(b) *Notice by tenant organization.* — Within 30 days of receipt of the owner's request for an election, the tenants may establish a single tenant organization, if one does not exist, and if a tenant organization exists or is established, it shall provide each tenant, the owner, and the Mayor with written notice of the election by first class mail and by conspicuous posting in common areas of the housing accommodation. Notice includes, at a minimum, the date, time and place of the election, and a summary of tenant rights, obligations, a list of tenant voter qualifications and disqualifications, and sources of technical assistance as published in the D.C. Register by the Mayor, if published.

(c) *Conduct of election.* — Within 60 days of receipt of an owner's request for an election, a tenant organization, if one exists or is established, shall conduct an election. If notice of an election is not provided as required by this section, upon the request of a tenant or an owner, the Mayor shall provide notice and conduct an election within 60 days of receipt of an owner's original request for an election.

(d) *Qualified voter.* —

(1) Except as provided in paragraph (2) of this subsection, a head of household residing in each rental unit of the housing accommodation is qualified to vote unless:

(A) No member of the household has resided in the accommodation for at least 90 days before the election;

(B) A member of the household is or has been an owner or an employee of the owner within 120 days prior to the date of application for eligibility; or

(C) A member of the household's continued right to remain a tenant as guaranteed by this chapter is exercised.

(2) A tenant who otherwise meets the requirements of this section and becomes an owner only after the exercise of his or her rights under subchapter IV of this chapter shall be qualified to vote.

(3) The Mayor shall determine the eligibility of voters prior to the election and shall devise such forms and procedures as may be necessary to verify eligibility under this subsection.

(4) An elderly or disabled tenant who delivers a waiver under § 42-3402.08(a)(2)(D) to the Mayor shall be qualified to vote in an election under this section.

(e) *Absentee ballot.* — A head of household unable to attend the election may submit to the Mayor or tenant organization, prior to the election, a signed absentee ballot or sworn statement of agreement or disagreement with the conversion.

(f) *Notification of election results.* — The tenant organization shall notify the owner and the Mayor of the results of the election within 3 days. If the Mayor conducts the election, the Mayor shall notify the owner of the results of the election within 3 days.

(g) *Election audit.* — The Mayor may monitor an election and take measures to preserve the integrity of the election process and result.

(h) *Coercion prohibited.* — An owner, tenant organization, or third party purchaser shall not coerce a household in order to influence the head of household's vote. Coercion includes, but is not limited to, the knowing circulation of inaccurate information; frequent visits or calls over the objection of that household; threat of retaliatory action; an act or threat not otherwise permitted by law which seeks to recover possession of a rental unit, increase rent, decrease services, increase the obligation of a tenant or cause undue or unavoidable inconvenience, harass or violate the privacy of the household; refusal to honor a lease provision; refusal to renew a lease or rental agreement; or other form of threat or coercion.

(i) *Compliance approved.* — If over 50 percent of the qualified voters vote in approval of conversion, or if an election is not held within 60 days of receipt of an owner's request pursuant to subsection (a) of this section or within such reasonable extension of time as the Mayor may consider necessary to hold an election in accordance with the procedural requirements of this chapter, the Mayor shall certify compliance with this section for purposes of conversion.

(j) *Compliance not approved.* — If 50 percent or less of the qualified voters vote in approval of conversion, or if an election is invalidated by the Mayor because of fraud or coercion in favor of conversion on the part of the owner, the Mayor shall not certify compliance with this section for purposes of conversion, and an owner may not request another tenant election for that accommodation for 1 year from the date of the election.

(k) *New election.* — If an election is invalidated by the Mayor because of fraud or coercion on the part of the tenant organization, the Mayor shall conduct a new election within 30 days of the invalidation.

(Sept. 10, 1980, D.C. Law 3-86, § 203, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(c), 28 DCR 326; Aug. 1, 1981, D.C. Law 4-27, § 2(a), 28 DCR 2824; Nov. 16, 2006, D.C. Law 16-179, § 2(c), 53 DCR 6698; Oct. 22, 2008, D.C. Law 17-247, § 2, 55 DCR 9201; Mar. 25, 2009, D.C. Law 17-353, § 125, 56 DCR 1117.)

Section references. — This section is referred to in § 42-3405.08.

Prior Codifications. — 1981 Ed., § 45-1612.

Effect of amendments. — D.C. Law 16-179, designated the existing text of subsec. (d) as subsec. (d)(1); in subsec. (d)(1), substituted "a member of the household's continued right to remain a tenant as guaranteed by this chapter is exercised" for "he or she is a head of household whose continued right to remain a tenant is required by this chapter"; and added subsec. (d)(2).

D.C. Law 17-247 rewrote subsec. (d), which had read as follows: "(d) Qualified voter.—(1) A head of household residing in each rental unit of the housing accommodation is qualified to vote unless no member of the household has resided in the accommodation for at least 90 days before the election, or unless a member of the household is or has been an employee of the

owner within 120 days prior to the date of application for eligibility, or unless a member of the household's continued right to remain a tenant as guaranteed by this chapter is exercised. The Mayor shall determine the eligibility of voters prior to the election and shall devise such forms and procedures as may be necessary to verify eligibility under this subsection. (2) An elderly or disabled tenant who delivers a waiver under § 42-3402.08(a)(2)(D) to the Mayor shall be qualified to vote in an election under this section."

D.C. Law 17-353 validated a previously made technical correction in subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Tenant-Owner Voting in Conversion Election Clarification Temporary Amendment Act of 2006 (D.C. Law 16-253, March 8, 2007, law notification 54 DCR 3038).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2 of Tenant-Owner Voting in Conversion Election Clarification Emergency Amendment Act of 2006 (D.C. Act 16-565, December 19, 2006, 53 DCR 10269).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-3401.03.

Legislative history of Law 4-27. — Law 4-27, the “Rental Housing Conversion and Sale Act Amendment Act of 1981,” was introduced in Council and assigned Bill No. 4-162, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-48 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-179. — For Law 16-179, see notes following § 42-3401.01.

Legislative history of Law 17-247. — Law 17-247, the “Tenant-Owned Voting in Conversion Election Clarification Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-267 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-494 and transmitted to both Houses of Congress for its review. D.C. Law 17-247 became effective on October 22, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Effective date. — Section 3 of D.C. Law 4-27 provided that the provisions of § 2(a) shall take effect retroactively as of August 10, 1980.

Mayor's Orders. — Declaration of continuing housing crisis: See Mayor's Order 83-239, October 7, 1983.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Construction and application.

Due process.

Inverse condemnation.

Construction and application.

Provision of Rental Housing Conversion and Sale Act conditioning any proposed condominium conversion upon approval of majority vote of eligible tenants in tenant election unconstitutional as delegating to tenants absolute, unreviewable veto power over any condominium conversion; final decision had to be made by governmental agency according to some enunciated standards. D.C. Code 1981, §§ 45-1611, 45-1612. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

It was not necessary for apartment building owners to conduct tenant election on proposed condominium conversion, in order to raise claim that statute conditioning condominium conversion upon approval of majority vote of eligible tenants was facially unconstitutional in delegating to private citizens the legislative power granted by congress to district council. D.C. Code 1981, §§ 45-1611, 45-1612. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

Due process.

District of Columbia legislation pursuant to

police power, generally prohibiting condominium and cooperative conversions of apartment buildings but delegating to a majority of tenants authority to waive that prohibition pursuant to tenant election, did not violate due process rights of apartment owners on theory of impermissibly delegating governmental authority to private citizens. U.S. Const. Amends. 5, 14; D.C. Code 1981, §§ 45-1601 et seq., 45-1602(1), 45-1611(a)(1), 45-1612(i). *Silverman v. Barry*, 845 F.2d 1072, 1988 U.S. App. LEXIS 5854 (C.A.D.C. 1988), writ of certiorari denied by 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383, 1988 U.S. LEXIS 5092, 57 U.S.L.W. 3347 (1988).

Statute conditioning condominium conversion upon approval of majority vote of eligible tenants did not violate due process rights of property owners on theory the tenant consent requirement impermissibly delegated legislative authority to private citizens without providing standards for granting or withholding of consent. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amends. 5, 14. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

Inverse condemnation.

Cause would be remanded for further proceedings on property owners' claim that enactment of statute conditioning condominium conversion upon approval of majority vote of eligible tenants and effecting “delays though

the use of illegal ordinances" took property for public use without just compensation in violation of Fifth Amendment; cases had come before superior court on district's motion for summary judgment, statements regarding facts filed by district and property owners addressed statutory claims alone and did not address factual context of issue of uncompensated taking, and owners were not put on notice that they were required to submit materials from which court might find that genuine issue of material fact existed regarding uncompensated taking issue. D.C. Code 1981, § 45-1601 et seq.; U.S. Const.Amend. 5. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

There was fact issue as to whether alternative economic uses were available to apartment building owners, precluding summary judgment on claim that combined effect of local rent control and statute conditioning any proposed condominium conversion upon approval of majority vote of eligible tenancy in tenant election amounted to uncompensated taking of private property. D.C. Code 1981, §§ 45-1611, 45-1612; U.S. Const.Amend. 5. *Hornstein v. Barry*, 530 A.2d 1177, 1987 D.C. App. LEXIS 426 (1987), vacated by 537 A.2d 1131, 1988 D.C. App. LEXIS 44 (D.C. 1988).

§ 42-3402.04. Conversion fee.

(a) *Definitions.* — For the purposes of this section, the term "low-income" means annual household income, as determined by the Mayor, no greater than 80% of the area median income, as defined in § 42-2801(1)).

(a-1) *Amount.* — An owner who converts a housing accommodation, including vacant buildings, into a condominium or a cooperative shall pay the Mayor a conversion fee of 5% of the sales price for each condominium unit, or proportionate value of the cooperative residence, within the housing accommodation.

(b) *Fee exemption.* — The Mayor shall not require a conversion fee for a condominium unit, or the proportionate share value of a cooperative residence, that:

(1) Is sold to a low-income household;

(2)(A) Is sold to a member of a household who, as determined by the Mayor:

(i) Has maintained a rental unit in the building complex as the principal place of residence for at least one year prior to the owner's application to the Mayor for conversion of the housing accommodation to a condominium or cooperative;

(ii) Is a domiciliary of the District of Columbia; and

(iii) Is entitled to the possession, occupancy, or benefits of the rental unit.

(B) If an owner seeks an exemption under this paragraph, the member of the household may elect to purchase any unit in the housing accommodation in lieu of her current unit;

(3)(A) Is sold to a person who:

(i) Is 62 years of age or older; or

(ii) Has a disability as defined in § 42-3402.08(c)(1)(B)(ii); and

(B) Does not have a total annual household income, as determined by the Mayor, greater than 100% of the area median income, as defined in § 42-2801(1); or

(4)(A) Is sold as part of a conversion of a property that has been registered as vacant for at least 12 months prior to conversion; and

(B) Is part of a building complex not exceeding 10 units.

(b-1) *Payment.* —

(1) The conversion fee required by subsection (a-1) of this section shall be paid in full into an escrow account at the time of settlement on the sale of the condominium unit or cooperative share.

(2)(A) The escrow agent shall submit the conversion fee to the Mayor within 30 business days of settlement, together with a copy of the recordation and transfer tax form reflecting the sale price of each condominium unit or cooperative share.

(B) The name, address, and telephone number of the escrow agent shall be stated on the deed or on a form attached to the deed.

(3) The Mayor may impose civil fines, penalties, and fees for failure to submit the conversion fee to the Mayor, any infraction of the provisions of this section, or any rules issued under the authority of this section pursuant to Chapter 18 of Title 2 [§ 2-1801 et seq.]. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2 [§ 2-1801 et seq.].

(4) No portion of the conversion fee required under this section shall be included in the purchase price of units exempted from the conversion fee in subsection (b) of this section.

(c) *Repealed.*

(Sept. 10, 1980, D.C. Law 3-86, § 204, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(c), 30 DCR 4866; Sept. 6, 1995, D.C. Law 11-31, § 3(e), 42 DCR 3239; June 5, 2003, D.C. Law 14-307, § 1606, 49 DCR 11664; Mar. 2, 2007, D.C. Law 16-192, § 2162(a), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-354, § 2(a), 56 DCR 1155.)

Prior Codifications. — 1981 Ed., § 45-1613.

Effect of amendments. — D.C. Law 14-307, in subsec. (a), substituted “5%” for “4%”.

D.C. Law 16-192 rewrote the section.

D.C. Law 17-354 rewrote subsecs. (a), (b), and (b-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(e) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

For temporary (225 day) amendment of section, see § 2 of Vacancy Conversion Fee Exemption Reinstatement Temporary Act of 2006 (D.C. Law 16-250, March 8, 2007, law notification 54 DCR 250).

Section 3 of D.C. Law 16-250 repealed Subtitle M of Title II of the Fiscal year 2007 Budget Support Congressional Review Emergency Act of 2006, effective October 3, 2006 (D.C. Act 16-499; 53 DCR 8818), as of October 3, 2006.

Section 2 of D.C. Law 17-17 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Act 16-476; 53 DCR 6899), as of March 2, 2007.

Section 3 of D.C. Law 17-17 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget

Support Congressional Review Emergency Act of 2007, effective January 16, 2007 (D.C. Act 17-1; 54 DCR 1165), as of January 16, 2007.

Section 2 of D.C. Law 17-162 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Act 16-476; 53 DCR 6899), as of March 2, 2007.

For temporary (225 day) amendment of section, see § 2 of Vacancy Exemption Repeal Temporary Amendment Act of 2008 (D.C. Law 17-191, July 18, 2008, law notification 55 DCR 9769).

For temporary (225 day) amendment of section, see § 2(a) of Vacancy Exemption Repeal Clarification Temporary Amendment Act of 2008 (D.C. Law 17-274, November 25, 2008, law notification 55 DCR 12594).

Emergency legislation. — For temporary amendment of section, see § 3(e) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(e) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(e) of the Rental

Housing Conversion and Sale Act of 1980, Reenactment and Amendment Congressional Review Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

For temporary (90 day) amendment of section, see § 1606 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1606 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1606 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2162(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of sections, see § 2162(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Vacancy Conversion Fee Exemption Reinstatement Emergency Act of 2006 (D.C. Act 16-533, December 4, 2006, 53 DCR 9844).

For temporary (90 day) amendment of section, see § 2162(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) repeal of Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Law 16-192; 53 DCR 6899), see § 2 of Conversion Fee Clarification Emergency Amendment Act of 2008 (D.C. Act 17-305, February 22, 2008, 55 DCR 2516).

For temporary (90 day) amendment of section, see § 2 of Vacancy Exemption Repeal Emergency Amendment Act of 2008 (D.C. Act 17-354, April 17, 2008, 55 DCR 5372).

For temporary (90 day) amendment, see § 2(a) of Vacancy Exemption Repeal Clarification Emergency Amendment Act of 2008 (D.C. Act 17-461, July 28, 2008, 55 DCR 8732).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see His-

torical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 42-1103.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 17-354. — Law 17-354, the "Conversion Fee Clarification and Technical Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-179 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 18, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-688 and transmitted to both Houses of Congress for its review. D.C. Law 17-354 became effective on March 25, 2009.

Short title. — Short title: Section 2161 of D.C. Law 16-192 provided that subtitle M of title II of the act may be cited as the "Vacancy Conversion Fee Clarification Amendment Act of 2006".

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(e) of D.C. Law 10-144 purported to amend (b), (b-1) and (c) of this section to read as follows:

"(b) Reduction. The Mayor may reduce the conversion fee to as low as \$50 per condominium unit or proportionate value of the cooperative residence if the owner declares the intent to sell or provide a lease or option to lease for at least 5 years to tenants who, at the time of request for an election, are low income and whose continued right to remain a tenant is not required by statute ("qualifying tenants"). To qualify for this reduction, a sale or lease cannot require monthly payments greater than existing rents, as may be increased by the annual adjustment of general applicability provided in § 45-2516(b) or a similar annual adjustment in any successor rent control act, or 25% of gross household income, whichever is greater. The number of qualifying tenants is the number of tenants identified by the Mayor as residing in the accommodation as of the date of the owner's request for an election. The amount of the reduction shall be determined by the Mayor based on factors such as the Mayor may determine, which shall include the percentage of tenants in the accommodation who are qualifying tenants and the percentage of qualifying tenants who purchase or continue renting in accordance with the first sentence of this subsection. The Mayor shall also reduce the

amount of the conversion fee of each unit or proportionate value for a cooperative residence that is sold or leased to a low-income purchaser or to a new low-income tenant who leases a unit in accordance with the requirements of this subsection, regardless of where that low-income purchaser or tenant previously lived. In doing so, the Mayor shall consider the lost conversion fee revenue in comparison to the cost of making available the number of low-income units purchased or leased. If the owner does not sell or lease to the percentage of qualifying tenants or outside purchasers or tenants as declared, the unpaid balance of the conversion fee as adjusted by the Mayor in accordance with the actual sales and leases

shall be paid by the owner. The Mayor may assert a lien against any unsold units or proportionate value of the cooperative residence by filing a lien against the land. The Mayor shall not attempt to collect any conversion fee which would not have been due if the provisions of this section had been in effect at the time of the conversion.

“(b-1) Payment. The conversion fee required by subsection (a) of this section shall be paid no later than at the time of settlement on the individual units or shares.

“(c) Waiver of lien. The Mayor shall waive a conversion fee lien on a condominium unit or proportionate value of the cooperative residence purchased by a low-income tenant.”

CASE NOTES

Exemptions.

Developer, which intended to convert a vacant row house into a condominium, was not procedurally barred from filing for a not-a-housing-accommodation exemption (NHA exemption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development had already issued a notice of filing on developer's condominium registration application, as developer's delayed request for the NHA exemption occurred because developer at first was not aware it qualified for the exemption, developer filed the request shortly after it filed its registration application, the issuance of the notice of filing neither commenced nor ended the conversion process, and CASD was not prejudiced by developer's delay. 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

Letter from the Administrator of the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development, outlining a procedural bar against developer from obtaining a not-a-housing-accommodation exemption (NHA exemption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the CASD had already issued a notice

of filing on developer's condominium registration application, was not entitled to a heightened level of deference when developer judicially challenged the purported procedural bar, as the Administrator's letter was an informal ruling, rather than a rule or regulation adopted through a formal notice-and-comment rulemaking proceeding or contested case in conformity with the District of Columbia Administrative Procedure Act (DCAPA). 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

Developer, which intended to convert a vacant row house into a condominium, was not judicially estopped from filing for a not-a-housing-accommodation exemption (NHA exemption) from the conversion fee under the Rental Housing Conversion and Sale Act (Conversion Act) because the Rental Conversion and Sales Division (CASD) of the Department of Housing and Community Development had already approved developer's application for the vacancy exemption from the tenant approval provision of the Conversion Act; in both its vacancy exemption application and its conversion fee application developer characterized the building as an uninhabitable shell, and developer did derive an unfair advantage or impose an unfair detriment on CASD by seeking the additional conversion fee exemption. 1303 Clifton St., LLC v. District of Columbia, 39 A.3d 25, 2012 D.C. App. LEXIS 85 (2012).

§ 42-3402.05. Certification fee.

An owner who seeks to convert must pay the Mayor a certification fee. The Mayor is authorized to collect and establish the amount of the fee. The certification fee shall be sufficient to cover the cost of administering this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 205, 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1614.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3402.05a. Application fees.

(a) The Mayor may impose and collect fees for the processing of an application for conversion and other services provided by the Mayor or the Department of Housing and Community Development to implement this chapter. The Mayor shall establish the fees by rulemaking pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.].

(b) Each application for approval of a conversion shall be accompanied by payment to cover the fees, if any, prescribed pursuant to this section.

(c) Fees collected by the Mayor pursuant to this section shall be deposited in the Department of Housing and Community Development Unified Fund, established pursuant to § 42-2857.01.

(Sept. 10, 1980, D.C. Law 3-86, § 205a, as added Sept. 24, 2010, D.C. Law 18-223, § 2103, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2103 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 42-1904.03.

§ 42-3402.06. Cooperative conversion.

(a) *Notice.* — An owner shall provide each tenant with prior written notice of an intent to convert of at least 120 days by first class mail and by conspicuous posting in common areas of the housing accommodation. An owner shall not provide notice prior to the Mayor's certification of compliance for purposes of cooperative conversion.

(b) *Tenant opportunity to purchase unit.* — An owner shall make to each tenant of the housing accommodation a bona fide offer to sell to each tenant a share or membership interest in the cooperative. An offer includes, at a minimum, the asking price for the share or membership interest and a summary of tenant rights and sources of technical assistance as published in the D.C. Register by the Mayor, if published. An owner shall afford the tenant at least 60 days in which to make a contract to purchase the share or membership interest at a mutually agreeable price and under mutually agreeable terms, which shall be at least as favorable as those offered to the general public. An owner shall not provide notice prior to the Mayor's certification of compliance for purposes of cooperative conversion.

(c) *Notice to vacate.* — An owner shall not serve a notice to vacate until at least 90 days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase.

(Sept. 10, 1980, D.C. Law 3-86, § 206, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(d), 30 DCR 4866.)

Cross references. — Conversion condominiums, see § 42-1904.08.

Tenant evictions, exceptions, see § 42-3505.01.

Prior Codifications. — 1981 Ed., § 45-1615.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3402.07. [Reserved].

§ 42-3402.08. Elderly or disabled tenancy.

(a) *Eviction limited.* —

(1) For the purposes of this subsection, the term “qualifying income” means a total annual household income, as determined by the Mayor, no greater than 95% of the area median income, as defined in § 42-2801(1).

(2) Notwithstanding any other provision of this subchapter, Chapter 19 of this title, or Chapter 35 of this title, an owner of a rental unit in a housing accommodation converted under the provisions of this subchapter shall not evict or send notice to vacate to an elderly or disabled tenant if the combined annual household income for his or her unit, as determined by the Mayor, does not exceed the qualifying income, unless:

(A) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;

(B) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation;

(C) The tenant fails to pay rent; or

(D)(i) For the purposes of a single, scheduled tenant election under § 42-3402.03, the tenant waives, in writing, his or her right to remain a tenant.

(ii) The waiver shall state that it was made voluntarily, without coercion as set forth in § 42-3402.03(h), and with full knowledge of the ramifications of a waiver of the right to remain a tenant.

(iii) The waiver under sub-subparagraph (i) of this subparagraph shall apply only to the single, scheduled tenant election for which it was given.

(b) *Rent level.* — Any owner of a converted unit shall not charge an elderly or disabled tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual increases on that basis authorized under the Rental Housing Act.

(c) *Qualification.* —

(1) An elderly or disabled tenant shall qualify under this subchapter if, on the day a tenant election is held for the purposes of conversion, the elderly or disabled tenant:

(A) Is entitled to the possession, occupancy, or the benefits of his or her rental unit; and

(B)(i) Is 62 years of age or older; or

(ii)(I) Has a disability as defined in section 3(2)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(2)(A)), and 29 C.F.R. § 1630.2(g)(1).

(II) In making a determination that a tenant qualifies under this sub-subparagraph, the Mayor shall limit the inquiry to the minimum information and documentation necessary to establish that the tenant meets the definition of disabled provided in sub-sub-subparagraph (I) of this sub-subparagraph, and shall not inquire further into the nature or severity of the disability. The Mayor shall not require the tenant to provide a description of the disability when making an eligibility determination; provided, that the Mayor shall require that a physician or other licensed healthcare professional verify that a tenant meets the definition of disabled in sub-sub-subparagraph (I) of this sub-subparagraph. The Mayor shall not require the tenant to provide eligibility documentation in less than 30 days.

(III) The Mayor shall maintain records of the information compiled under this sub-subparagraph; provided, that the Mayor:

(aa) Shall not disclose information about a tenant's disability unless the disclosure is required by law;

(bb) May provide a list of eligible voters upon request; and

(cc) May make a list of eligible voters available at the site of the tenant election.

(IV) In requesting information under this sub-subparagraph, the Mayor shall inform tenants that their names will be absent from publicly available lists of eligible voters and the Mayor shall not disclose information provided about a tenant's disability unless the disclosure is required by law.

(2) The Mayor shall develop such forms and procedures as may be necessary to verify eligibility under this subsection.

(Sept. 10, 1980, D.C. Law 3-86, § 208, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(d), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(e), 30 DCR 4866; Nov. 16, 2006, D.C. Law 16-179, § 2(d), 53 DCR 6698; Mar. 8, 2007, D.C. Law 16-240, § 2, 54 DCR 597; Mar. 25, 2009, D.C. Law 17-354, § 2(b), 56 DCR 1155.)

Cross references. — Homestead housing preservation, transfers of real estate of elderly tenants, see § 42-2107.

Section references. — This section is referred to in §§ 42-3402.03, 42-3402.04, and 42-3402.10.

Prior Codifications. — 1981 Ed., § 45-1616.

Effect of amendments. — D.C. Law 16-179 rewrote subsec. (a); in subsec. (b), substituted "elderly or disabled" for "elderly"; and rewrote subsec. (c).

D.C. Law 16-240 rewrote subsec. (c)(1)(B)(ii).

D.C. Law 17-354 rewrote subsec. (a)(1), which had read as follows: "(a) Eviction limit-

ed.—(1)(A) For the purposes of this subsection, the term 'qualifying income' means the applicable percentage for the household size, as set forth in subparagraph (B) of this paragraph, of the area median income for a household of 4 persons for the Washington-Arlington-Alexandria Metropolitan area, as established by the U.S. Department of Housing and Urban Development."

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see His-

torical and Statutory Notes following § 42-3401.03.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 16-179. — For Law 16-179, see notes following § 42-3401.01.

Legislative history of Law 16-240. — Law 16-240, the “Definition of Persons with Disabilities A.D.A. Conforming Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-875, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was assigned Act No. 16-596 and transmitted to both Houses of Congress for its review. D.C. Law 16-240 became effective on March 8, 2007.

Legislative history of Law 17-354. — For Law 17-354, see notes following § 42-3402.04

Mayor’s Orders. — Declaration of continuing housing crisis: See Mayor’s Order 83-239, October 7, 1983.

Editor’s notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

Construction and application.

Tenant was not entitled to possession of rented premises on effective date of statute prohibiting eviction of disabled tenants during apartment-to-condominium conversion, and thus statute did not apply to prevent tenant’s eviction after her refusal during conversion to either purchase or vacate premises, even though tenant had not been evicted at time statute went into effect; at time statute went

into effect, tenant’s right to occupy the premises had ended, due to expiration of statutory 120-day period to vacate after conversion, and landlord had chosen to treat her as an unlawful holdover tenant by filing an eviction action. *Redman v. Potomac Place Assocs., LLC*, 972 A.2d 316, 2009 D.C. App. LEXIS 166 (2009), writ of certiorari denied by 558 U.S. 1121, 130 S. Ct. 1071, 175 L. Ed. 2d 900, 2010 U.S. LEXIS 237, 78 U.S.L.W. 3392 (2010).

§ 42-3402.09. Property tax abatement.

The Mayor shall not require the owner of a converted condominium unit occupied by a low-income tenant to pay real property tax for the unit. The proportionate value for a unit in a converted cooperative housing accommodation occupied by a low-income tenant shall be exempt from real property tax.

(Sept. 10, 1980, D.C. Law 3-86, § 209, 27 DCR 2975; Sept. 6, 1995, D.C. Law 11-31, § 3(f), 42 DCR 3239.)

Prior Codifications. — 1981 Ed., § 45-1617.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(f) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Re-

cess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Editor’s notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(f) of D.C. Law 10-144 purported to amend this section to read as follows: “The Mayor shall not require the owner of a con-

verted condominium unit occupied by a low-income tenant to pay real property tax for the unit. The proportionate value for a unit in a

converted cooperative housing accommodation occupied by a low-income tenant shall be exempt from real property tax.”

§ 42-3402.10. Exceptions to coverage of subchapter; expiration provisions.

(a) This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 42-3405.12.

(b) The rights granted under § 42-3402.08 to eligible elderly and disabled tenants shall not be abrogated or reduced notwithstanding such a declaration by the Mayor.

(c)(1) A housing provider shall not unreasonably interfere with the tenant's comfort, safety, or enjoyment of a rental unit, or engage in retaliatory action under § 42-3505.02, for the purpose of causing a housing accommodation to become vacant.

(2) For the purposes of this subsection, the terms “unreasonable interference” or “retaliatory action” may include:

(A) The knowing circulation of inaccurate information;

(B) Frequent visits or calls over the objection of the household;

(C) The threat of retaliatory action;

(D) An act or threat not otherwise permitted by law to recover possession of a rental unit, increase rent, decrease services, increase the obligation of a tenant or cause undue or avoidable inconvenience, harass or violate the privacy of the household, reduce the quality or quantity of service, refuse to honor a lease, rental agreement, or any provision of a lease or rental agreement, refuse to renew a lease or rental agreement, or terminate a tenancy without legal cause; or

(E) Any other form of threat or coercion.

(d)(1) The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status that are fully vacant as of the date of application to the Mayor for a vacancy exemption; provided, that this exemption shall not apply to:

(A) § 42-3402.04; or

(B) Any violation of subsection (c) of this section.

(2) The Mayor shall make such inquiries as the Mayor considers appropriate to determine whether the vacating of each unit was voluntary.

(3) If the Mayor determines that the vacating of any unit was not voluntary, the Mayor shall disapprove or rescind the approval of the application for exemption.

(4) All vacancy exemptions shall expire after 180 days; provided, that vacancy exemptions in effect on March 25, 2009, shall expire 180 days after March 25, 2009.

(e) The Mayor may impose civil fines, penalties, and fees for any infraction of the provisions of this section, or any rules issued under the authority of this section pursuant to Chapter 18 of Title 2 [§ 2-1801 et seq.]. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2 [§ 2-1801 et seq.].

(Sept. 10, 1980, D.C. Law 3-86, § 210, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(f), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(b), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(g), 42 DCR 3239; Nov. 16, 2006, D.C. Law 16-179, § 2(e), 53 DCR 6698; Mar. 2, 2007, D.C. Law 16-192, § 2162(b), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-354, § 2(c), 56 DCR 1155.)

Cross references. — Filing and recordation of articles of incorporation of cooperative associations, see § 29-906.

Notice, registration or rejection, and hearing provisions concerning application for registration of condominium, see § 42-1904.06.

Section references. — This section is referred to in §§ 42-3404.12 and 42-3405.07.

Prior Codifications. — 1981 Ed., § 45-1618.

Effect of amendments. — D.C. Law 16-179 substituted “elderly and disabled” for “elderly”.

D.C. Law 16-192 rewrote the section which had read as follows: “This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 42-3405.12. The rights granted under § 42-3402.08 to eligible elderly and disabled tenants may not be abrogated or reduced notwithstanding such a declaration by the Mayor. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status which are fully vacant as of the date of application to the Mayor for a vacancy exemption. Occupancy by 1 or more employees or other occupants for security or similar nontenancy purposes shall not prevent the accommodation from qualifying for a vacancy exemption. The owner shall submit to the Mayor an application for vacancy exemption in order to qualify for this vacancy exemption. The application shall require that the owner certify that the owner is not an owner or purchaser as described in the third sentence of the second paragraph of § 42-3402.02(a), and that the owner has affirmatively sought information from any applicable former owner in order to make a truthful certification. The Mayor shall accept the owner’s certification unless the Mayor has received information which tends to challenge the truthfulness of the certification.”

D.C. Law 17-354 rewrote the section, which had read as follows: “This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 42-3405.12. The rights granted under § 42-3402.08 to eligible elderly and disabled tenants may not be abrogated or reduced notwithstanding such a declaration by the Mayor. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status that are fully vacant as of the date of application to the Mayor for a vacancy exemption; provided, that

this exemption shall not apply to § 42-3402.04. Occupancy by 1 or more employees or other occupants for security or similar nontenancy purposes shall not prevent the accommodation from qualifying for a vacancy exemption. The owner shall submit to the Mayor an application for vacancy exemption in order to qualify for this vacancy exemption. The application shall require that the owner certify that the owner is not an owner or purchaser as described in the third sentence of the second paragraph of § 42-3402.02(a), and that the owner has affirmatively sought information from any applicable former owner in order to make a truthful certification. The Mayor shall investigate all requests for vacancy exemptions under this section and photographically document the vacant status of at least 25% of the total number of randomly selected units in the housing accommodation. All vacancy exemptions shall expire 90 days after certification. Vacancy exemptions properly certified, and in effect, on March 2, 2007, shall expire 90 days after March 2, 2007.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988 (D.C. Law 7-140, September 21, 2008, law notification 35 DCR 7279).

For temporary (225 day) amendment of section, see § 2(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1993 (D.C. Law 10-13, September 11, 1993, law notification 40 DCR 6835).

For temporary (225 day) amendment of section, see § 2(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Section 2 of D.C. Law 16-250 repealed Subtitle M of Title II of the Fiscal year 2007 Budget Support Emergency Act of 2006, effective August 8, 2006 (D.C. Act 16-477; 53 DCR 7068), as of August 8, 2006.

Section 3 of D.C. Law 16-250 repealed Subtitle M of Title II of the Fiscal year 2007 Budget Support Congressional Review Emergency Act of 2006, effective October 3, 2006 (D.C. Act 16-499; 53 DCR 8818), as of October 3, 2006.

Section 2 of D.C. Law 17-17 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Act 16-476; 53 DCR 6899), as of March 2, 2007.

Section 3 of D.C. Law 17-17 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007, effective January 16, 2007 (D.C. Act 17-1; 54 DCR 1165), as of January 16, 2007.

Section 2 of D.C. Law 17-162 repealed Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Act 16-476; 53 DCR 6899), as of March 2, 2007.

For temporary (225 day) amendment of section, see § 2(b) of Vacancy Exemption Repeal Clarification Temporary Amendment Act of 2008 (D.C. Law 17-274, November 25, 2008, law notification 55 DCR 12594).

Emergency legislation. — For temporary amendments of section, see § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1993 (D.C. Act 10-29, May 19, 1993, 40 DCR 3418) and § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Congressional Recess Emergency Amendment Act of 1993 (D.C. Act 10-82, August 4, 1993, 40 DCR 6056).

For temporary amendment of section, see § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

For temporary (90 day) amendment of section, see § 2162(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2162(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Vacancy Conversion Fee Exemption Reinstatement Emergency Act of 2006 (D.C. Act 16-533, December 4, 2006, 53 DCR 9844).

For temporary (90 day) amendment of section, see § 2162(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Vacancy Conversion Fee Exemption Reinstatement Emergency Amendment Act of 2007 (D.C. Act 17-31, April 19, 2007, 54 DCR 4081).

For temporary (90 day) repeal of Subtitle M of Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Law 16-192; 53 DCR 6899), see § 2 of Conversion Fee Clarification Emergency Amendment Act of 2008 (D.C. Act 17-305, February 22, 2008, 55 DCR 2516).

For temporary (90 day) amendment, see § 2(b) of Vacancy Exemption Repeal Clarification Emergency Amendment Act of 2008 (D.C. Act 17-461, July 28, 2008, 55 DCR 8732).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 16-179. — For Law 16-179, see notes following § 42-3401.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 17-354. — For Law 17-354, see notes following § 42-3402.04

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(g) of D.C. Law 10-144 purported to amend this section to read as follows: "This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. The rights granted under § 45-1616 to eligible elderly tenants may not be abrogated or reduced notwithstanding such a declaration by the Mayor. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status which are fully vacant as of the date of application to the Mayor for a vacancy exemption. Occupancy by 1 or more employees or other occupants for security or similar nontenancy purposes shall not prevent the accommodation from qualifying for a vacancy exemption. The

owner shall submit to the Mayor an application for vacancy exemption in order to qualify for this vacancy exemption. The application shall require that the owner certify that the owner is not an owner or purchaser as described in the third sentence of § 45-1611(a)(2) and that the

owner has affirmatively sought information from any applicable former owner in order to make a truthful certification. The Mayor shall accept the owner's certification unless the Mayor has received information which tends to challenge the truthfulness of the certification."

CASE NOTES

Vacancy exemption.

Exemption in statute limiting right of landlords to sell apartment units as condominiums for apartments which were vacant on January 1, 1980 did not apply to permit conversion of apartment units which, while vacant on that

date, were occupied eight months later on statute's effective date. D.C. Code 1981, § 45-1618. *Dyer v. D.C. Dep't of Housing & Community Development*, 452 A.2d 968, 1982 D.C. App. LEXIS 488 (1982).

§ 42-3402.11. Retroactive conversion.

With respect to conversions of housing accommodations by owners or contract purchasers who received a notice of filing or filed articles of incorporation as a housing cooperative prior to August 10, 1980 (the effective date of the Rental Housing Conversion and Sale Emergency Act of 1980 (D.C. Act 3-248)), or prior to the effective date of this chapter [September 10, 1980], the following provisions shall apply:

(1) *Definitions.* — For the purposes of this section, unless the subject matter requires otherwise, the term:

(A) "Association" means a group enterprise legally incorporated under the District of Columbia Cooperative Association Act, or a cooperative corporation incorporated pursuant to the laws of another jurisdiction.

(B) "Comparable rental units" means rental units of corresponding facilities with the same or similar benefits or services included in the price of the rent.

(C) "Declarant" shall mean a person(s), association(s), or group(s) who:

(i) In the case of a housing cooperative, obtained an exemption pursuant to § 4 of the Cooperative Regulation Act of 1979 and filed articles of incorporation prior to August 10, 1980; or

(ii) In the case of a condominium conversion, received a notice of filing pursuant to § 42-1904.06.

(D) "Eligible recipient" means the head of household in which the household has a combined annual income totaling less than the following percentages of the median annual family income (for a household of 4 persons) for the District of Columbia, as such median is determined by the United States Bureau of Census and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes collected under contract by local or regional government agencies:

one-person household	50%
two-person household	60%
three-person household or a 1- or 2-person household containing any person who is 60 years of age or older or who has a disability as defined by the Mayor	90%
four-person household	100%

five-person household	110%
more than 5-person household	120%

(E) "Family" means a group of persons related by blood or marriage.

(F) "Head of household" means an individual who maintains the affected rental unit as his or her principal place of abode, is a bona fide resident and domiciliary of the District of Columbia, and contributes more than one-half the cost of maintaining such rental unit. An individual may be considered a head of household without regard as to whether such individual would qualify as a head of household for the purposes of any other law.

(G) "High rent housing accommodation" means any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:

(i) Multiply the number of rental units in the following categories by the corresponding rents established by the United States Department of Housing and Urban Development for the District of Columbia as the current fair market rents for existing housing under § 8 Housing Assistance Payments Program for Elevator or Non-Elevator (as appropriate) Buildings: (1) efficiency rental units; (2) 1 bedroom rental units; (3) 2 bedroom rental units; (4) 3 bedroom rental units; (5) 4 or more bedroom rental units; so that the rates are not lower than \$267 for 1 bedroom, \$314 for 2 bedroom, \$408 for a 3 or more bedroom, and \$221 for efficiency rental units;

(ii) Total the results obtained in sub-subparagraph (i) of this subparagraph; and

(iii) Increase the result obtained in sub-subparagraph (ii) of this subparagraph by the maximum percentage of any upward rent adjustments found to be warranted by the District of Columbia Rental Accommodations Commission pursuant to § 206 of the Rental Housing Act of 1977.

(H) "Housing accommodation" means any structure or building in the District of Columbia containing 1 or more rental units, and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy, and in which at least 60% of the rooms devoted to living quarters for tenants or guests are used for transient occupancy; any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes; or any dormitory of an institute of higher education, or a private boarding school, in which rooms are provided for students.

(I) "Housing expense" means the amount of rent attributable to a rental unit plus the cost of gas, electricity, water, and sewer services if not included in the rent and if paid by the occupant of such rental unit, but shall exclude any security deposit.

(J) "Housing project" means a group of housing accommodations which are managed as a single business entity.

(K) "Suitable size" means for a 1 person family, an efficiency rental unit; for a 2 person family, a 1 bedroom rental unit; for a family of 3 or 4 persons, a 2 bedroom rental unit; for a family of 5 or 6 persons, a 3 bedroom rental unit;

and for a family of 7 or more persons, a 4 bedroom rental unit; except, that adjustments shall be made to allow children and unmarried adults of the opposite sex, to have separate sleeping rooms. In determining suitable size for a comparable rental unit, 1 person living in a 1 bedroom rental unit before relocation as a result of cooperative conversion shall be eligible for assistance at the level of a 1 bedroom comparable rental unit.

(L) "Total monthly rent" shall include the rents asked for vacant units.

(2) *Eligibility for housing assistance and relocation compensation.* —

(A) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion cooperative shall pay housing assistance, in an amount calculated according to paragraph (3) of this section, to any eligible recipient who:

(i) Makes application for such assistance;

(ii) Has been living, for at least 1 year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he or she is being displaced;

(iii) Is displaced from a rental unit because such rental unit is being converted to a cooperative by the declarant; and

(iv) Relocates in the District of Columbia. Such housing assistance shall be paid in 1 lump sum payment, within 30 days after the date the declarant receives notification pursuant to subparagraph (C) of paragraph (5) of this section, to the eligible recipient or the Mayor, as appropriate. Beginning with the 25th month occurring immediately after the month in which such eligible recipient relocated, and for the immediately succeeding 35 months thereafter, housing assistance payments to such recipient shall be made by the Mayor if, as of the first day of the 25th month occurring after his or her relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which the recipient is entitled to receive under this section.

(B) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant shall pay relocation compensation to an eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the occupant received the 120-day notice of declarant's intention to convert as required by § 603 of the Rental Housing Act of 1977. Such relocation compensation shall be calculated according to the provisions of subparagraph (D) of paragraph (4) of this section.

(C) No part of any housing assistance payment or any relocation compensation made under this section shall be considered income to the eligible recipient for the purposes of Chapter 18 of Title 47. Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment.

(3) *Calculation of housing assistance.* —

(A) The amount of each housing assistance payment to be made under this section shall be calculated as follows:

(i) If the amount of an eligible recipient's average monthly housing expense, during the 12 consecutive month period ending with the month preceding the month during which he or she relocated as a result of the rental unit being converted to a cooperative, is an amount which is less than 25% of the average net monthly family income computed for such period, then the amount of the monthly housing assistance payment to such eligible recipient shall be in an amount equal to the difference between an amount equal to 25% of such average net monthly family income and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(ii) If the amount of an eligible recipient's average monthly housing expense, during such period, is an amount which is more than 25% of such average net monthly family income, then the amount of the monthly housing assistance payment shall be in an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(iii) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either sub-subparagraph (i) or (ii) of this subparagraph, as appropriate, by 24. To obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by 36.

(B) The Mayor shall determine, from time to time and at least once every 12 months, the range of rents being charged in the District of Columbia by landlords of privately-owned housing accommodations for available 1 bedroom, 2 bedroom, 3 bedroom or more, and efficiency rental units. The Mayor shall publish his or her preliminary range of rents in the District of Columbia Register and, within 30 days after publication shall hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used for the purposes of this section. The figure obtained under either sub-subparagraph (i) or (ii) of subparagraph (A) of this paragraph, as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time the housing assistance payment is made to such eligible recipient, and the amount of the eligible recipient's average monthly housing expense for the 12-month period referred to in sub-subparagraph (i) of subparagraph (A) of this paragraph.

(4) *Calculation of relocation compensation.* —

(A) The amount of relocation compensation payable shall be calculated as follows:

(i) Relocation compensation in the amount of \$125 for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit, or, if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the

furnishings. For the purpose of the preceding sentence, a "room" in an apartment unit shall mean any space 60 square feet or larger which has a fixed ceiling and floor and is subdivided with fixed partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(ii) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington metropolitan area. Such adjustments shall be made no more than once in any calendar year and shall be made only after prior notice and hearing.

(B) After notification of the Mayor's determination pursuant to paragraph (5)(B) of this section, the declarant shall pay relocation compensation as follows:

(i) If the declarant has received at least 10 days advance written notice of the date upon which the apartment unit is to be vacated, the payment shall be paid no later than 24 hours prior to the date the apartment unit is to be vacated; or

(ii) If no such notice has been received, then payment shall be made within 30 days after the apartment unit is vacated.

(C) If there is more than 1 person entitled to relocation compensation with respect to an apartment unit, each such person shall be entitled to share equally in the amount of relocation compensation.

(D) In any case in which there is a question as to whether relocation compensation shall be paid for an apartment unit, or to whom, or the proper amount of such compensation, the declarant shall pay to the Mayor the amount indicated in the notice issued pursuant to paragraph (5)(B) of this section for such apartment unit and shall thereby be relieved of any further obligation under this section with respect to such apartment unit. The Mayor shall hold such payment and shall determine, after investigation, whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons, if any, entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(E) Payment or relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to the declarant by the court rendering the judgment for possession.

(5) *Application for housing assistance and relocation compensation.* —

(A) Each declarant, at the same time he or she sends tenants the 120-day notice required under § 603 of the Rental Housing Act of 1977, shall send to each tenant the application forms (with instructions) provided by the Mayor for making application for housing assistance and relocation compen-

sation payable under the provisions of this section. Each applicant for such housing assistance or relocation compensation shall give to the Mayor reasonable information as may be required in order to determine an applicant's eligibility. All information provided to the Mayor under this paragraph shall be confidential and shall not be disclosed to any person except to parties and their attorneys, officials, and employees conducting proceedings under this section.

(B) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for relocation compensation payable under paragraph (2)(B) of this section, then such applicant shall be presumed to be an eligible recipient. Within 15 working days from receipt of the completed application, the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid, and the address at which such payment should be delivered. Each declarant shall make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he or she is liable to that eligible recipient. The payment of relocation compensation is subject to review pursuant to paragraph (4)(D) of this section.

(C)(i) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for housing assistance payable under paragraph (2)(A) of this section, then such applicant shall be presumed to be an eligible recipient. The Mayor shall notify the appropriate declarant of the amount of housing assistance payment due, to whom it shall be paid, and the address at which such payment should be delivered.

(ii) In the event that a declarant believes either that the recipient is not an eligible recipient, or has not met the requirements of paragraph (2)(A) of this section, or that the payment to that recipient should be lower than the amount indicated by the Mayor for housing assistance payments, the declarant may seek review of the eligibility of the recipient, the recipient's eligibility under paragraph (2)(A) of this section, and the amount of such payment by: (1) Making the payment indicated to the Mayor; and (2) filing a notice of appeal and request for a hearing with the Mayor within 10 days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made. Based on the record of the hearing, the Mayor shall determine whether the recipient is actually eligible for the payment as indicated in the Mayor's notice, or whether the amount of the payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, the Mayor shall issue an order to that effect, and shall refund to the declarant such excess monies, as is appropriate.

(D) The Mayor may review bi-annually, or earlier upon request by a declarant, both the continued eligibility of a recipient for housing assistance and the amount of such payments.

(6) *Payments of housing assistance.* — The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if

the Mayor elects not to make a lump sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose.

(7) *Tax exemption.* —

(A) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay housing assistance, in an amount calculated according to paragraph (3) of this section, to any eligible recipient who:

- (i) Makes application for such assistance;
- (ii) Has been living, for at least 1 year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he or she is being displaced;
- (iii) Is displaced from a rental unit because such rental unit is being converted to a condominium by the declarant; and
- (iv) Relocates in the District of Columbia.

Such housing assistance shall be paid in 1 lump sum payment within 30 days after the date such recipient relocates. Beginning with the 25th month occurring immediately after the month in which such recipient relocated, and for the immediately succeeding 35 months thereafter, housing assistance payments to such recipient shall be made by the Mayor if, as of the first day of the 25th month occurring after his or her relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which he or she is entitled to receive under this section.

(B) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay relocation compensation to any eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the notice required by § 42-1904.03 is given. Such relocation assistance shall be calculated according to the provisions of paragraph (9) of this section.

(C) No part of any housing assistance payment or any relocation compensation made under this section shall be considered income to the recipient for the purposes of Chapter 18 of Title 47. Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment.

(8) *Computation of housing assistance.* —

(A) The amount of each housing assistance payment to be made under this section shall be calculated as follows:

- (i) If the amount of an applicant's average monthly housing expense, during the 12 consecutive month period ending with the month preceding the month during which he or she relocated as a result of his or her rental unit being converted to a condominium, is an amount which is less than 25% of the average net monthly family income, computed for such period, then the amount of the monthly housing assistance payment to such applicant shall be

in an amount equal to the difference between an amount equal to 25% of such average net monthly family income and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation (excluding security deposit, if any).

(ii) If the amount of a recipient's average monthly housing expense, during such period, is an amount which is more than 25% of such average net monthly family income, then the amount of the monthly housing assistance payment payable to such applicant shall be an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation (excluding security deposit, if any).

(iii) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either sub-subparagraph (i) or (ii) of this subparagraph, as appropriate, by 24. To obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by 36.

(B) The Mayor shall determine, from time to time and at least once every 12 months, the range of rents being charged in the District of Columbia by landlords of privately owned housing accommodations for generally available 1 bedroom, 2 bedroom, 3 bedroom or more, and efficiency rental units. The Mayor shall publish his or her preliminary range of rents in the District of Columbia Register and during the next immediately occurring 30 days hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used for the purposes of this section. The figure obtained under either sub-subparagraph (i) or (ii) of subparagraph (A) of this paragraph, as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time of the housing assistance payment is made to such recipient, and the amount of the recipient's average monthly housing expense for the 12-month period referred to in sub-subparagraph (i) of subparagraph (A) of this paragraph.

(9) Computation of relocation compensation. —

(A) The amount of relocation compensation payable shall be calculated as follows:

(i) Relocation compensation in the amount of \$125 for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit or if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of the preceding sentence, a "room" in an apartment unit shall mean any space 60 square feet or larger which has a fixed ceiling and floor and is subdivided with partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(ii) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington metropolitan area. Such adjustment shall be made no more than once in any calendar year and shall be made only after prior notice and hearing.

(B) Relocation compensation shall be paid no later than 24 hours prior to the date the apartment unit is to be vacated by the tenants or subtenants if the declarant has received at least 10 days advance written notice of the date upon which the apartment unit is to be vacated. If no such notice has been received, then relocation compensation shall be paid within 30 days after the apartment unit is vacated.

(C) If there is more than 1 person entitled to relocation compensation with respect to an apartment unit, each such person entitled to relocation compensation shall be entitled to share equally in the amount of relocation compensation. In any case in which there is a dispute as to whether relocation compensation shall be paid for an apartment unit, or the proper amount of such compensation or the persons entitled to such compensation, the declarant may pay to the Mayor the maximum possible relocation compensation allowable for such apartment unit and shall thereby be relieved of any further obligation under this subparagraph with respect to such apartment unit. The Mayor shall hold such payment and shall determine whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(D) Payment of relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action, whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to declarant by the court rendering the judgment for possession.

(10) *Notification of eligibility; review of eligibility determinations.* —

(A) Each declarant of a conversion condominium, in addition to and at the same time that he or she sends tenants in the building to be converted the notices required under § 42-1904.08(b), shall send to each such tenant the necessary application forms (with instructions), provided by the Mayor, for making application for the housing assistance payments and relocation compensation payable under the provisions of this section. Each applicant for such assistance or compensation shall give to the Mayor such reasonable information as he or she may require in order to determine whether such applicant is eligible for the payments for which he or she applied. All information provided to the Mayor under this section shall be confidential and shall not be disclosed to any person or governmental or private entity in such a manner as to identify the applicant to whom the information relates.

(B) If the information provided by an applicant on the form filed with the Mayor indicates that such applicant is eligible for the relocation compensation payable under paragraph (7)(B) of this section, then such applicant shall be presumed to be an eligible recipient and the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid,

and the address at which such payment should be delivered. Each declarant shall make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he or she is liable to that recipient.

(C) In the event that a declarant believes that either the recipient is not an eligible recipient, or that the payment to that recipient should be lower than the amount indicated by the Mayor, for either housing assistance payments or for relocation compensation, he or she may seek review of both the eligibility and amount of payment by: (i) Making the payment as indicated by the Mayor; and (ii) filing a notice of appeal and request for a hearing with the Mayor within 10 days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made. Based on the record of the hearing held as requested by a declarant, the Mayor shall determine whether the recipient is actually eligible for the payment received, or whether the amount of such payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, he or she shall issue an order to that effect, requiring the recipient to return to the declarant any payment received to which he or she was not entitled.

(D) The eligibility of a recipient for housing assistance payments shall be reviewed by the Mayor bi-annually.

(11) *Deposit in and payment of banks of District of Columbia housing assistance payments.* — The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if the Mayor elects not to make a lump sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose.

(Sept. 10, 1980, D.C. Law 3-86, § 211(b), as added Aug. 1, 1981, D.C. Law 4-27, § 2(b), 28 DCR 2824; Apr. 24, 2007, D.C. Law 16-305, § 66, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 45-1619.

Effect of amendments. — D.C. Law 16-305, in par. (1)(D), substituted “has a disability” for “is handicapped”.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

References in text. — The “Cooperative Regulation Act of 1979,” referred to in paragraph (1)(C)(i), is D.C. Law 3-19.

The “Rental Housing Act of 1977,” referred to in paragraphs (1)(G)(iii) and (5)(A), is D.C. Law 2-54, which had formerly been codified as Chapter 16 of this title, and which was subsequently superseded by the Rental Housing Act of 1980, D.C. Law 3-131. See also § 42-3401.03(15).

The phrase “the effective date of this chapter” which appears in the introductory language of this section, probably refers to the effective date of D.C. Law 3-86, which was September 10, 1980.

*Subchapter III. Relocation Assistance.***§ 42-3403.01. Short title.**

This subchapter may be cited as the ‘Relocation and Housing Assistance Act of 1980’.

(Sept. 10, 1980, D.C. Law 3-86, § 301, 27 DCR 2975.)

§ 42-3403.02. Relocation payment.

(a) *Required.* — If an owner converts a housing accommodation into a condominium or cooperative pursuant to this chapter, the owner shall provide a relocation payment to each tenant who does not purchase a unit or share or enter into a lease or lease option of at least 5 years’ duration.

(b) *Amount.* — An owner shall pay the tenant only if the tenant provides a relocation expense receipt or a written estimate from a moving company or other relocation service provider. Regardless of the amount on the receipt or written estimates, the owner shall pay no less than \$125, but is not required to pay more than \$1,000 to the tenant.

(c) *Method.* — An owner may pay by check or cash to the tenant or person designated by the tenant, and shall pay within 7 days of receipt of the written estimate or receipt, the amount indicated or an amount required by subsection (b) of this section.

(d) *Entitlement to receive.* —

(1) The tenant who bears the cost of relocation is entitled to the payment. If there is more than 1 tenant who bears the cost of relocation from a unit, the owner shall pay the tenants proportionally.

(2) The owner is not required to make a relocation payment to a tenant against whom the owner has obtained a judgment for possession of the unit.

(3) If an owner does not make a relocation payment as required, the tenant has a private right of action to collect the payment and is entitled to costs and reasonable attorney fees for bringing the action.

(Sept. 10, 1980, D.C. Law 3-86, § 302, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(c), 28 DCR 2824; Mar. 21, 2009, D.C. Law 17-319, § 3(a), 56 DCR 214.)

Cross references. — Homestead housing preservation, transfers of real estate of persons not electing to purchase, see § 42-2107.

Prior Codifications. — 1981 Ed., § 45-1621.

Effect of amendments. — D.C. Law 17-319, in subsec. (b), substituted “is not required to pay more than \$1,000 to the tenant” for “is not required to pay more than \$500 to the tenant”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of Abatement of Nuisance Properties and Tenant Receivership Temporary amend-

ment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) amendment, see § 3(a) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 3(a) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Histor-

ical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.03. Relocation services.

The Mayor shall provide relocation assistance to low-income tenants who move from a housing accommodation which is converted into a condominium or cooperative. The Mayor shall provide service in the manner required by § 6-333.01.

(Sept. 10, 1980, D.C. Law 3-86, § 303(a), 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1622.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.04. Housing assistance payments.

(a) *Required.* — If an owner converts a housing accommodation into a condominium or cooperative pursuant to this chapter, the Mayor shall provide housing assistance payment for 3 years to each low-income tenant who does not purchase a unit or share.

(a-1) *Administration.* — Housing assistance payments shall be administered by the Department of Housing and Community Development.

(b) *Eligibility.* — In order to receive housing assistance payments, the tenant must:

(1) Be low-income;

(2) Apply for the assistance;

(3) Have been living in a rental unit within the converted housing accommodation for at least 180 days prior to receipt of an owner's request for a tenant election for purposes of conversion; and

(4) Reside within the District of Columbia after conversion of the housing accommodation.

(c) *Amount.* — The amount of a housing assistance payment is calculated as follows:

(1) If a household's average monthly housing expenses during the 12 consecutive months prior to conversion are less than 25 percent of net monthly household income, the amount of a monthly housing assistance payment is the difference between 25 percent of net monthly household income and the projected average monthly housing expenses after conversion;

(2) If a household's average monthly housing expenses during the 12 consecutive months prior to conversion are more than 25 percent of net monthly household income, the amount of a monthly housing assistance payment is the difference between the prior average monthly housing expenses and the projected average monthly housing expenses after conversion;

(3) The Mayor may review the eligibility of a household and the amount of payments and change the household's status accordingly;

(4) For purposes of this subsection, the term "housing expenses" includes rent or monthly payment for a unit plus the cost of all utilities if not included in the rent or monthly payment. The term "housing expense" shall not include a security deposit. The Mayor is not required to consider housing expenses which exceed the level of fair market rents established by the federal Department of Housing and Urban Development for the District of Columbia.

(d) *Method.* —

(1) The Mayor may make housing assistance payments on a monthly basis or an aggregate basis for any portion of the period of eligibility. An aggregate payment is calculated by multiplying the monthly payment amount by the number of months desired.

(2) The Mayor may contract with a financial institution in the District of Columbia for provision of housing assistance payments with District funds.

(3) The Mayor may provide housing assistance payments to the tenant, or to the tenant's landlord directly.

(Sept. 10, 1980, D.C. Law 3-86, § 304, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(d), 28 DCR 2824; Mar. 3, 2010, D.C. Law 18-111, § 2111(a), 57 DCR 181.)

Section references. — This section is referred to in § 42-3403.07.

Prior Codifications. — 1981 Ed., § 45-1623.

Effect of amendments. — D.C. Law 18-111 added subsec. (a-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2111(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2111(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 3-86. — For

legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Short title. — Short title: Section 2110 of D.C. Law 18-111 provided that subtitle L of title II of the act may be cited as the "Housing Assistance Payment Clarification Amendment Act of 2009".

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.05. Payments not subject to District tax.

Relocation and housing assistance payments are not income to the recipient for purposes of the District of Columbia Income and Franchise Tax Act of 1947 (§ 47-1801.01 et seq.).

(Sept. 10, 1980, D.C. Law 3-86, § 305, 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1624.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.06. **Tenant rights.**

The Mayor shall include tenant rights to relocation payments, relocation services, and housing assistance payments in the summary of tenant rights required for publication in the D.C. Register. When an owner sends notice of intent to convert a housing accommodation into a condominium or cooperative, the owner shall attach to that notice a summary of tenant rights under this subchapter and an application for relocation services and housing assistance payments as published in the D.C. Register by the Mayor.

(Sept. 10, 1980, D.C. Law 3-86, § 306, 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1625.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.07. **Housing Assistance Fund. [Repealed].**

Repealed.

(Sept. 10, 1980, D.C. Law 3-86, § 307, 27 DCR 2975; Mar. 10, 1983, D.C. Law 4-196, § 2, 30 DCR 57; Nov. 5, 1983, D.C. Law 5-38, § 2(g), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(c), 35 DCR 5715; Dec. 7, 2004, D.C. Law 15-205, § 2082, 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 2070, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(l), 53 DCR 6794; Oct. 1, 2007, D.C. Law 16-181, § 3, 53 DCR 6703; Sept. 18, 2007, D.C. Law 17-20, § 2002, 54 DCR 7052; Mar. 21, 2009, D.C. Law 17-319, § 3(b), 56 DCR 214; Mar. 3, 2010, D.C. Law 18-111, § 2111(b), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9032, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 45-1626.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988 (D.C. Law 7-140, September 21, 2008, law notification 35 DCR 7279).

For temporary (225 day) amendment of section, see § 3(b) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2082 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2070 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2002, of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment, see § 3(b) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 3(b) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

For temporary (90 day) amendment of section, see § 2111(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 2111(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-196. — Law 4-196, the “Rental Housing Conversion and Sale Act of 1980 Amendment Act of 1982,” was introduced in Council and assigned Bill No. 4-442, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-280 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 42-1103.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-1102.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 42-2802.

Short title. — Short title of subtitle G of title II of Law 15-205: Section 2081 of D.C. Law 15-205 provided that subtitle G of title II of the act may be cited as the Housing Assistance Fund Amendment Act of 2004.

Short title: Section 2001 of D.C. Law 17-20 provided that subtitle A of title II of the act may be cited as the “Rental Housing Operations Transfer Amendment Act of 2007”.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3403.08. Information and technical assistance.

The Mayor shall establish an office to coordinate programs of technical assistance and serve as a central clearinghouse for information needed by tenants regarding the conversion and sale of rental housing. Program areas for this office include, but are not limited to, counseling, subsidy programs, relocation services, housing purchase and rehabilitation finance, tax relief programs, and technical assistance for the formation of tenant organizations, purchase of housing accommodations, rehabilitation, and conversion to cooperative or condominium.

(Sept. 10, 1980, D.C. Law 3-86, § 308, 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1627.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3403.09. Expiration provisions.

This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 42-3405.12.

(Sept. 10, 1980, D.C. Law 3-86, § 309, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(h), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(d), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(h), 42 DCR 3239.)

Prior Codifications. — 1981 Ed., § 45-1628.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988 (D.C. Law 7-140, September 21, 2008, law notification 35 DCR 7279).

For temporary (225 day) amendment of section, see § 2(b) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1993 (D.C. Law 10-13, September 11, 1993, law notification 40 DCR 6835).

For temporary (225 day) amendment of section, see § 3(h) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(h) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(h) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(h) of the Rental

Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(h) of D.C. Law 10-144 purported to amend this section to read as follows: "This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662." Expiration of subchapter: For provisions regarding the expiration of this subchapter, see § 42-3404.12.

Subchapter IV. Opportunity to Purchase.

§ 42-3404.01. Short title.

This subchapter may be cited as the "Tenant Opportunity to Purchase Act of 1980".

(Sept. 10, 1980, D.C. Law 3-86, § 401, 27 DCR 2975.)

§ 42-3404.02. Tenant opportunity to purchase; "sale" defined.

(a) Before an owner of a housing accommodation may sell the accommodation, or issue a notice of intent to recover possession, or notice to vacate, for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale.

(b) For the purposes of subchapters IV and V of this chapter, the terms "sell" or "sale" include, but are not limited to, the execution of any agreement pursuant to which the owner of the housing accommodation agrees to some, but not all, of the following:

(1) Relinquishes possession of the property;

(2) Extends an option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance and provides that a portion of the payments received pursuant to the agreement is to be applied to the purchase price;

(3) Assigns all rights and interests in all contracts that relate to the property;

(4) Requires that the costs of all taxes and other government charges assessed and levied against the property during the term of the agreement are to be paid by the lessee either directly or through a surcharge paid to the owner;

(5) Extends an option to purchase an ownership interest in the property, which may be exercised at any time after execution of the agreement but shall be exercised before the expiration of the agreement; and

(6) Requires the assignee or lessee to maintain personal injury and property damage liability insurance on the property that names the owner as the additional insured.

(c)(1) For the purposes of subchapters IV and V of this chapter, the term “sell” or “sale” shall include:

(A) A master lease which meets some, but not all, of the factors described in subsection (b) of this section or which is similar in effect; and

(B)(i) The transfer of an ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns an accommodation as its sole or principal asset, which, in effect, results in the transfer of the accommodation pursuant to subsection (a) of this section.

(ii) For the purposes of sub-subparagraph (i) of this subparagraph, the term “principal asset” means the value of the accommodation relative to the entity’s other holdings.

(2) For the purposes of subchapters IV and V of this chapter, and notwithstanding anything to the contrary herein, the term “sell” or “sale” shall not include:

(A)(i) A transfer, even though for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.

(ii) For purposes of sub-subparagraph (i) of this subparagraph, the term “member’s of the decedent’s family” means:

(I) A surviving spouse, or domestic partner as defined in § 32-701(3), of the decedent, lineal descendants of the decedent, or spouses of lineal descendants of the decedent;

(II) A trust for the primary benefit of the persons referred to in sub-sub-subparagraph (I) of this sub-subparagraph; and

(III) A partnership, corporation, or other entity controlled by the individuals referred to in sub-sub-subparagraphs (I) and (II) of this sub-subparagraph;

(B) An inter-vivos transfer, even though for consideration, between spouses, parent and child, siblings, grandparent and grandchild, or domestic partners as defined in § 32-701(3);

(C) A transfer of legal title or an interest in an entity holding legal title to a housing accommodation pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage;

(D) A tax sale or transfer pursuant to tax foreclosure;

(E) A bankruptcy sale;

(F) Any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994;

(G) Any transfer of a property directly caused by a change in the form of the entity owning the property; provided, that the transfer is without consideration, including a transfer of interests in an entity to a limited liability company as contemplated by § 29-1013;

(H) The transfer of interests in a partnership or limited liability company that owns an accommodation as its sole or principal asset; provided, that the sole purpose of the transfer is to admit one or more limited partners or investor members who will make capital contributions and receive tax benefits pursuant to section 42 of the United States Internal Revenue Code of 1986 approved October 22, 1986 (100 Stat. 2189; 26 U.S.C. § 42), or a comparable District program;

(H-i)(i) A conveyance or re-conveyance for a project that improves or renovates the real property located at 733 15th Street, N.W. (Lot 22, Square 222), commonly known as "The Woodward Building," if:

(I)(aa) It was operated as an office building until being vacated by commercial tenants to accommodate rehabilitation of the building;

(bb) It was or is being redesigned for residential tenants, having previously not been designed for such use; and

(cc) It was not occupied by residential tenants at the commencement of the project or as of October 18, 2007;

(II) Its zoning is appropriate for its proposed residential use;

(III) There is a conveyance by 15th and H Street Associates, LLP to the Master Tenant by entering into a master lease with the Master Tenant for the purpose of utilization of historic tax credits for the improvement or the renovation;

(IV) 15th and H Street Associates, LLP:

(aa) Submits a complete application for historic tax credits to the U.S. Department of Interior, National Park Service;

(bb) Receives approval of part 1 and part 2 of the application; and

(cc) Pursues approval of part 3 of the application in good faith;

(V) There is a re-conveyance of the ownership interests within 120 months of the commencement of the project to 15th and H Street Associates, LLP, which re-conveyance restores the ownership interests in 15th and H Street Associates, LLP as existing at the commencement of the project (subject to any other transfers otherwise exempt under this section) and terminates the interest of the Master Tenant in the real property;

(VI) 15th and H Street Associates, LLP does not sell the real property to the Investor Member except as permitted by this subparagraph;

(VII) A Notice of Transfer is issued in accordance with subsection (d)(1)(A) of this section; and

(VIII) Prior to the execution of a residential lease for the building, which execution occurs prior to the re-conveyance provided for in sub-sub-subparagraph (IV) of this sub-subparagraph, the proposed tenant receives a written notice, on a single page, in a minimum 14-point bold Times Roman font, that:

(aa) 15th and H Street Associates, LLP has entered into a master lease with the Master Tenant for the purpose of utilizing historic tax credits;

(bb) Within 120 months of the execution of the master lease, there may be a re-conveyance of the interest held by the Master Tenant to 15th and H Street Associates, LLP, which re-conveyance restores the ownership interests in 15th and H Street Associates, LLP as existing at the commencement of the project (subject to any other transfers otherwise exempt under this section) and terminates the interest of the Master Tenant in the real property; and

(cc) The conveyances and re-conveyances, with respect to the real property only, are exempt from the provisions of this act if the requirements of this subparagraph are met, including the requirement that 15th and H Street Associates, LLP:

(1) Submits a complete application for historic tax credits to the U.S. Department of Interior, National Park Service;

(2) Receives approval of part 1 and part 2 of the application; and

(3) Pursues approval of part 3 of the application in good faith.

(ii) For the purposes of this subparagraph, the term:

(I) "Conveyance" or "re-conveyance" means a transfer of interests in real property or an entity, including by sale, exchange, or execution or termination of a master lease, or a combination thereof.

(II) "Historic tax credits" means tax credits under section 47 of the Internal Revenue Code of 1986, approved October 16, 1962 (76 Stat. 966; 26 U.S.C. § 47).

(III) "Investor Member" means an investor in the Master Tenant.

(IV) "Master Tenant" means a limited partnership or limited liability company that will:

(aa) Be primarily owned by Investor Members who will have a noncontrolling interest; and

(bb) Own a noncontrolling interest in 15th and H Street Associates, LLP.

(V) "Noncontrolling interest" means an equity interest under which the Investor Member shall not, notwithstanding the Investor Member's customary consent rights, and absent a default or breach by the managing partner:

(aa) Exercise management or control over any aspect of the project, including acting as directors, officers, managers, or decision-makers in the project; or

(bb) Play a role in selecting, recommending, or choosing directors, officers, managers, or decision-makers in the project.

(iii) For the purposes of this subparagraph, failure to comply with the requirements of sub-subparagraph (I) through (VIII) of this subparagraph shall require 15th and H Street Associates, LLP to comply anew with the requirements of this chapter as though this subparagraph had not been enacted.

(I) A transfer of title to the housing accommodation to a limited liability company pursuant to § 29-1013;

(J) A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust pursuant to § 42-1102(17);

(K) A transfer of the housing accommodation to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust, pursuant to § 42-1102;

(L) A transfer of the housing accommodation by the trustee of a revocable trust if the transfer would otherwise be excluded under this act if made by the grantor of the revocable trust, pursuant to § 42-1102(19);

(M) A transfer pursuant to court order or court-approved settlement; and

(N) A transfer by eminent domain or under threat of eminent domain.

(3) An owner who is uncertain as to the applicability of this chapter shall be deemed to be an aggrieved party for the purposes of seeking declaratory relief under §§ 42-3405.03 and 42-3405.03a. The tenant or tenant organization in such an accommodation shall be deemed to be an aggrieved party, for these purposes.

(d)(1)(A) In addition to any other notice required by subchapters IV and V of this chapter, if an opportunity to purchase is not provided under this section, the owner shall provide each tenant and the Mayor written notice ("Notice of Transfer") of the transfer of an interest in a housing accommodation or of any ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns a housing accommodation.

(B) Notwithstanding any other provision in this chapter, an owner shall not be required to file a Notice of Transfer for a transfer exempt under subsection (c)(2)(A), (D), (E), (F), (I), (J), (K), (L), (M), or (N) of this section; provided, that a notice of the transfer shall be filed with the Mayor in a form prescribed by the Mayor.

(C) Notwithstanding any other provision in this chapter, a owner shall not be required to a Notice of Transfer for a transfer exempt under subsection(c)(2)(C) of this section.

(2) The Notice of Transfer shall be sent by registered or certified mail, return receipt requested, by commercial overnight delivery service that maintains proof of delivery, or by personal service, at least 90 days prior to the proposed date of transfer. Notice to tenants shall be sent to their address at the housing accommodation unless a tenant has supplied in writing to the owner a different address for notice.

(3)(A) The Notice of Transfer shall be substantially in the form prescribed by the Mayor and shall provide, at a minimum, a statement of the tenant or tenant organization's rights under this chapter, an accurate description of the

transfer containing all material facts, the date of the proposed transfer, and the reason, if any, why the owner asserts the transfer may not constitute a sale.

(B) In addition to any other requirements for the form of the Notice of Transfer prescribed pursuant to subparagraph (A) of this paragraph, a Notice of Transfer for a housing accommodation to be transferred for the purposes of receiving tax benefits pursuant to section 42 of the United States Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2189; 26 U.S.C. § 42), or a comparable District program, shall include a description of the applicable federal or District subsidy, and a description of the steps in the transaction employed by the developer to avail itself of the subsidy.

(4) The owner's failure to provide the Notice of Transfer, or the provision of a notice that is fraudulent or contains material misrepresentations or material omissions, shall create a rebuttable presumption that the transfer constitutes a sale for purposes of subchapters IV and V of this chapter.

(5)(A) An aggrieved tenant or tenant organization duly organized under § 42-3404.11 and meeting pursuant to its by laws, whichever shall be applicable, may, within 45 days of the Mayor's receipt of the Notice of Transfer, file a notice indicating an intent to file a petition for relief pursuant to § 42-3405.03 or § 42-3405.03a.

(B) A Notice of Intent to File Petition shall be delivered by registered or certified mail, return receipt requested, by commercial overnight delivery service that maintains proof of delivery, or by personal service to the Mayor and simultaneously to the owner. The owner's address shall be that set forth in the Notice of Transfer.

(C) Failure of an aggrieved tenant or tenant organization to file timely the Notice of Intent to File Petition shall preclude the tenant or tenant organization from asserting any rights under subchapters IV and V of this chapter relating to the transfer identified in the Notice of Transfer.

(6) Within 30 days of the receipt by the Mayor of the Notice of Intent to File, a tenant or tenant organization shall have 30 days to file a petition for relief under § 42-3405.03 or § 42-3405.03a. A copy of the petition shall be delivered to owner by registered or certified mail, return receipt requested, or by personal service. Failure of a tenant or tenant organization to file timely the petition for relief shall preclude the tenant or tenant organization from asserting any rights under subchapters IV and V of this section relating to the transfer identified in the Notice of Transfer.

(7)(A) Notwithstanding the time requirements for notice in subsection (e)(5)(A) of this section, an aggrieved tenant or tenants, whichever shall be applicable, may, within 30 days of the Mayor's receipt of the notice of transfer of an accommodation pursuant to an exemption in subsection (b)(3) of this section ("Notice of Transfer Pursuant to an Exemption"), file a Notice of Intent to File Petition.

(B)(i) Failure of a tenant or tenants, pursuant to paragraph (7)(A) of this subsection, or a tenant or tenant organization pursuant to paragraph (7)(B) of this subsection, to file timely the Notice of Intent to File Petition shall preclude the tenant or tenant organization from asserting any rights under subchapters IV and V of this chapter relating to the transfer identified in the

Notice of Transfer Pursuant to an Exemption of an accommodation pursuant to an exemption.

(ii) A tenant or tenant organization shall be precluded from asserting any rights under subchapters IV and V of this chapter for a transfer exempt under subsection(c)(2)(C) of this section.

(C) Any change in the transfer agreement that would invalidate a claim of exemption shall be reported in writing to the Mayor and proper notice shall be provided to the tenant or tenant organization.

(8) For the purposes of providing notice under this subsection, the term "tenant" shall mean the person or persons who, under the terms of the lease or any amendment or consent executed pursuant thereto, are entitled to occupy the rental unit.

(9)(A) Upon 5 days of request by any person, the Mayor shall provide:

(i) Written certifications, including date of receipt or non-receipt, of any notices received under subchapters IV and V of this chapter; and

(ii) Copies of the notices.

(B) The certifications may be recorded among the records of the Recorder of Deeds and shall be exempt from filing fees.

(10) Notice of Transfer, Notice of Transfer Pursuant to an Exemption, Notice of Intent to File, and the petition for relief pursuant to § 42-3405.03 or § 42-3405.03a shall be referred to as "Time Certain Notices".

(Sept. 10, 1980, D.C. Law 3-86, § 402, 27 DCR 2975; Oct. 19, 1989, D.C. Law 8-49, § 2, 36 DCR 5790; Feb. 5, 1994, D.C. Law 10-68, § 37, 40 DCR 6311; Sept. 6, 1995, D.C. Law 11-31, § 3(i), 42 DCR 3239; Sept. 8, 2004, D.C. Law 15-176, § 3, 51 DCR 5707; July 22, 2005, D.C. Law 16-15, § 2(b), 52 DCR 6885; Mar. 2, 2007, D.C. Law 16-191, § 101(a), 53 DCR 6794; Oct. 18, 2007, D.C. Law 17-40, § 2, 54 DCR 8050; Sept. 12, 2008, D.C. Law 17-231, § 37, 55 DCR 6758.)

Section references. — This section is referred to in §§ 42-2851.04, 42-3404.05, and 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1631.

Effect of amendments. — D.C. Law 15-176, in subsec. (c), substituted "spouse, or domestic partner as defined in § 32-701(3)," for "spouse".

D.C. Law 16-15, in subsec. (b), substituted "subchapters IV and V of this chapter, the terms 'sell' or 'sale' include, but are not limited to, the execution of any agreement pursuant to which the owner of the housing accommodation agrees to some, but not all, of the following:" for "this subchapter, the terms 'sell' or 'sale' include the execution of any agreement that assigns, leases, or encumbers property, pursuant to which the owner"; rewrote subsec. (c); and added subsec. (d).

D.C. Law 16-191, in subsecs. (b), (c)(3), and (d)(5)(A), validated previously made technical corrections.

D.C. Law 17-40, in subsec. (c)(2), added subpar. (H-i).

D.C. Law 17-231, in subsec. (c)(2)(B), substituted "spouses" for "husband and wife".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(i) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

For temporary (90 day) amendment of section, see § 2 of Historic Preservation Tax

Credit Partnership and Limited Liability Company Clarification Emergency Act of 2007 (D.C. Act 17-111, July 27, 2007, 54 DCR 8227).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 8-49. — Law 8-49, the “Tenant Opportunity to Purchase Clarification Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-188, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-82 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 15-176. — For Law 15-176, see notes following § 42-1102.

Legislative history of Law 16-15. — For Law 16-15, see notes following § 42-3401.03.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

Legislative history of Law 17-40. — Law 17-40, the “Historic Preservation Tax Credit Partnership and Limited Liability Company Clarification Amendment Act of 2007,” was introduced in Council and assigned Bill No. 17-182 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 21, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 27, 2007, it was assigned Act No. 17-102 and transmitted to both Houses of Congress for its review. D.C. Law 17-40 became effective on October 18, 2007.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

Expiration of Law 17-40. — Section 3 of D.C. Law 17-40 provided: “This act shall expire 120 months after its effective date.”

Editor’s notes. — Application of Law 8-49: Section 3 of D.C. Law 8-49 provided that the act shall apply to any sale of a rental housing accommodation that occurs after June 23, 1988.

Reenactment of Law 3-86: See Historical and Statutory Notes following § 45-1601.

Amendment of section by Law 10-144: Section 2(i) of D.C. Law 10-144 purported to amend this section by adding (c) to read as follows:

“(c) For the purposes of this subchapter, the term ‘sell’ or ‘sale’ includes the transfer of 100% of all partnership interests in a partnership which owns the accommodation as its sole asset to 1 transferee or of 100% of all stock of a corporation which owns the accommodation as its sole asset to 1 transferee in 1 or more transactions occurring during a period of 1 year from the date of the first such transfer, and a master lease which meets some, but not all, of the factors described in subsection (b) of this section or which is similar in effect. For the purposes of this subchapter, the term ‘sell’ or ‘sale’ does not include a transfer, even though for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from such transfer will pass from the decedent’s estate to, or solely for the benefit of, charity. For purposes of the preceding sentence, the term ‘member’s of the decedent’s family’ means:

“(1) a surviving spouse of the decedent, lineal descendants of the decedent, or spouses of lineal descendants of the decedent,

“(2) a trust for the primary benefit of the persons referred to in clause (1), and

“(3) a partnership, corporation, or other entity controlled by the individuals referred to in clauses (1) and (2).

“The term ‘sell’ or ‘sale’ does not include a foreclosure sale, a tax sale, or a bankruptcy sale. An owner who is uncertain as to the applicability of this subchapter is deemed to be an aggrieved owner for the purposes of seeking declaratory relief under §§ 45-1653 and 45-1653.1. The tenant or tenant organization in such an accommodation is deemed to be an aggrieved tenant or tenant organization, as applicable, for these purposes. This subsection shall not apply to any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994.

Applicability of D.C. Law 15-176: Section 7 of D.C. Law 15-176 provides:

CASE NOTES

ANALYSIS

Actions.
 Apparent concession.
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Actions.

Tenants were not required to show they are financially capable of purchasing property or to form tenant organization before suing for landlord's failure to provide notice of intent to sell rental property, as required under District of Columbia Rental Housing Conversion and Sale Act; Act only requires tenants to form organization after notice is given and financial capacity to purchase is irrelevant to requirement of notice. D.C. Code 1981, §§ 45-1631, 45-1632, 45-1640(1)(C). *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Genuine issue of material fact as to whether action of possession against holdover tenants, brought by new corporate owner of apartment building which was formerly a subsidiary of prior owner of apartment building before 99% of subsidiary's stock was transferred to new shareholder, was a retaliatory eviction in violation of the Rental Housing Act, precluded summary judgment in the possession action. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Presumption of retaliatory action was triggered under the Rental Housing Act, in possession action brought by new owner of apartment building against holdover tenants, such that new owner was required to rebut presumption by clear and convincing evidence; though rent administrator had determined that new owner's intended improvements could not be safely or reasonably accomplished while the rental units were occupied, possession action was brought after tenants' association had sued former owner and new owner alleging that a sale had occurred that triggered tenants' right to purchase under the Rental Housing Conversion and Sale Act, holdover tenants were members of tenants' association, holdover tenants had been paying rent into the court registry rather than to the new owner, and the withholding of rent had continued during six-month period preceding new owner's service of 120-

day notices to vacate the building. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Genuine issue of material fact regarding whether transfer of apartment building by corporation to its subsidiary, followed by transfer of 99% of the stock of the subsidiary to new shareholder, constituted a sale under the Rental Housing Conversion and Sale Act, precluded summary judgment on issue of whether owner of building was required by the Act to first offer the building to tenants, in action by tenant's association against the corporations. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Factual issue concerning landlord's good faith in negotiating precluded summary judgment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Apparent concession.

Court of Appeals would exercise its discretion not to base its decision, in residential tenants' association's appeal from superior court's grant of summary judgment to landlord, on apparent concession by landlord's counsel, at oral argument before Court of Appeals, that an unequivocal acceptance by association of landlord's purported offer of sale under Tenant Opportunity to Purchase Act (TOPA) would have resulted in a binding contract without necessity for further negotiation, though counsel had declined to withdraw that concession when asked whether he wished to do so; the apparent concession was inconsistent with counsel's position in his appellate brief and at other points during oral argument that unqualified acceptance of purported offer of sale merely would have ensured the association an opportunity to negotiate a contract within the constraints imposed by TOPA, and Court of Appeals was uncertain whether landlord's counsel, under the press of judicial interrogation, had made an improvident concession that he did not intend. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

Attorney fees.

Landlord was not entitled to award of attorney fees under bad-faith exception to American Rule regarding action that was brought by assignee of apartment building's tenant association's right to purchase under Tenant Opportunity to Purchase Act and that sought specific performance to compel good-faith bargaining by landlord relating to sale of building, al-

though landlord was granted summary judgment, and although trial court found that level of handling of case by assignee's counsel could be criticized; trial court believed that action was not brought in bad faith. 6921 Ga. Ave., N.W., Ltd. P'ship v. Universal Cmty. Dev., LLC, 954 A.2d 967, 2008 D.C. App. LEXIS 363 (2008).

Trial court did not abuse its discretion by declining to award vendor of apartment building attorney fees incurred defending against claims of tenants' association, under attorney fees provision in vendor's and purchaser's purchase agreement, in purchaser's action for specific performance, conditional damages and return of his security deposit against vendor in which tenants' association intervened, even if tenants' associations' claims were premised on the same set of facts, as the attorney fees provision only authorized an award of attorney fees in disputes which arose between vendor and purchaser. *Psaromatis v. English Holdings I, L.L.C.*, 944 A.2d 472, 2008 D.C. App. LEXIS 98 (2008).

Condition precedent.

Landlord's obtaining a partial mortgage release was an "express condition" which had to occur before landlord's performance became due, in contracts to purchase rental units that landlord entered into with tenants pursuant to the Tenant Opportunity to Purchase Act (TOPA), where the contracts stated that they were voidable at the option of either landlord or tenant if the mortgagee did not agree to release the mortgage which encumbered the units, and releasing the mortgage was an event outside of the control of landlord. *BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 2009 D.C. App. LEXIS 597 (2009).

Purchaser was not required to forfeit his deposit for apartment building when purchaser refused to settle on the transaction at the time vendor demanded, because of vendor's failure to satisfy condition precedent in purchase agreement requiring vendor to convey to insurable title free of any claims by the building's tenants; purchase agreement required return of deposit if purchaser elected to terminate agreement due to vendor's failure to remove title exceptions in title commitment, title commitment contained an exception requiring vendor's proof of compliance with Tenants' Opportunity to Purchase Act (TOPA), when vendor demanded a closing buildings' tenants were claiming that vendor had failed to comply with TOPA, and, though purchaser had filed a notice of lis pendens, such notice did not prejudice or damage vendor, as other title defects remained and purchaser had agreed to lift the notice if vendor provided security for his deposit. *Psaromatis v. English Holdings I, L.L.C.*, 944 A.2d 472, 2008 D.C. App. LEXIS 98 (2008).

Vendor of apartment building failed to satisfy condition precedent in purchase agreement with purchaser to convey to purchaser insurable title free of any claims by the building's tenants, and thus purchaser's performance never became due; title commitment from purchaser's title company contained an exception requiring vendor's proof of compliance with Tenants' Opportunity to Purchase Act (TOPA), when vendor demanded that purchaser close on the transaction purchaser notified vendor that it had not satisfied the exception in the title commitment, building's tenants' association intervened in the parties' action and asserted claim against vendor alleging that vendor had not satisfied TOPA, and the purchase agreement and the settlement agreement did not require purchaser to proceed to settlement of the transaction in the face of tenants' claims. *Psaromatis v. English Holdings I, L.L.C.*, 944 A.2d 472, 2008 D.C. App. LEXIS 98 (2008).

Vendor's obligation to convey to purchaser insurable title to apartment building free of any claims by the building's tenants was, under the parties' purchase agreement and interim settlement agreement which parties' executed after purchaser commenced specific performance action, a condition precedent to purchaser's duty to proceed to settlement of the transaction; purchase agreement required vendor to convey a title that was insurable, agreement's addendum allowed purchaser to cancel if vendor failed to comply with the Tenants' Opportunity to Purchase Act (TOPA), title commitment from title company contained an exception requiring vendor's proof of compliance regarding TOPA, and settlement agreement extended the time for settlement of the transaction in order to allow vendor to provide tenants with a new offer of sale under TOPA. *Psaromatis v. English Holdings I, L.L.C.*, 944 A.2d 472, 2008 D.C. App. LEXIS 98 (2008).

Construction and application.

District of Columbia Financial Responsibility and Management Assistance Authority is not subject to District of Columbia Housing Act, given Act's absence from statute identifying those District of Columbia laws applicable to Authority. *District of Columbia Fin. Responsibility & Mgmt. Auth. v. Concerned Senior Citizens of the Roosevelt Tenant Assoc.*, 129 F.Supp.2d 13, 2000 U.S. Dist. LEXIS 18865 (2000).

Letter in which District of Columbia indicated that it was subject to District of Columbia Housing Act did not establish that Act was applicable to District; there was no legal authority holding that District had to adhere to so-called interpretation of District of Columbia statute, and letter did not purport to be official interpretation with binding effect. *District of Columbia Fin. Responsibility & Mgmt. Auth. v.*

Concerned Senior Citizens of the Roosevelt Tenant Assoc., 129 F.Supp.2d 13, 2000 U.S. Dist. LEXIS 18865 (2000).

District of Columbia Rental Housing Conversion and Sale Act applies to all sales of rental property, and not just to sales for purposes of demolition or discontinuance of housing use. D.C. Code 1981, § 45-1631(a); D.C. Code 1980 Supp. § 45-1681 et seq. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Under the Tenant Opportunity to Purchase Act (TOPA), an owner was required to entertain only one tenant-offer to buy a single-family accommodation, one tenant-offer from each rental unit to buy a two-four unit accommodation, and one tenant-offer, made collectively through a tenant organization, to buy an accommodation housing more than four rental units prior to accepting a third-party purchase offer; the rubric "single-family accommodation," the repeated statutory reference to "the tenant," and the statute's similar reference to a single "statement of interest" all implied strongly that the owner's obligation was to negotiate just once regarding the sale offer, not with multiple tenants of the dwelling each offering to purchase, a reading bolstered further by the definition of "tenant" as "including the plural," and when TOPA's drafters wanted to allow multiple and competing offers for the same housing accommodations, they did so expressly. *Morrison v. Branch Banking & Trust Co.*, 25 A.3d 930, 2011 D.C. App. LEXIS 442 (2011).

In determining when a transfer of an apartment building took place, for purposes of the right of tenants to be provided with notice and an opportunity to purchase a building under the Rental Housing Conversion and Sale Act, courts look at the date the deed was delivered, not the date it is recorded. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

If the landlord proposes to sell the property or discontinue its use as rental housing, the Tenant Opportunity to Purchase Act (TOPA) requires the landlord to extend a firm offer of sale that is capable of immediate, binding acceptance by the tenant, as opposed to merely extending an invitation to negotiate a sale within a reasonable time period. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

"Bona fide offer of sale," for purposes of provision of Tenant Opportunity to Purchase Act (TOPA) granting a residential tenant the opportunity to purchase the property at a price and terms which represent a bona fide offer of sale if the landlord proposes to sell the property or discontinue its use as rental housing, means an objectively good faith, honest offer of sale. 1836

S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

When determining whether landlord's purported offer of sale for eight-unit rental property and residential tenants' association's purported letters of acceptance could be interpreted as forming a binding contract, the court would construe those documents in light of the requirements of the Tenant Opportunity to Purchase Act (TOPA); the offer of sale document purported on its face to comply with or implement TOPA, and regardless of the parties' actual, subjective intentions, the ultimate issue was whether, by their choice of language including their invocations of TOPA, they objectively manifested a mutual intent to be bound contractually. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

Tenants association's Consumer Protection Procedures Act (CPPA) claim against owners of apartment buildings was expressly premised on its unsuccessful claim that transfer of ownership percentage between owners violated the Rental Housing Conversion and Sale Act, and thus association could not prevail on CPPA claim, even assuming CPPA covered landlord-tenant relations; complaint characterized the alleged violations of the Sale Act as "unlawful trade practices" prohibited by the CPPA, and association's briefs stated that the "violation of the Sale Act also gives rise to remedies under the Consumer Protection Procedures Act," that "violations of the Sale Act's disclosure obligations are unlawful trade practices actionable under the CPPA," and that the "unfair trade practices" were "the failure to make the disclosures and offers of sale required by the Sale Act." *Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., L.P.*, 894 A.2d 1113, 2006 D.C. App. LEXIS 143 (2006).

Conveyance of an apartment building from the former building owner to his wholly owned corporation was not a sale that triggered the tenants' statutory right of first refusal under the Tenant Opportunity to Purchase Act, but rather was a restructuring, where the conveyance was effectuated for no purpose other than to legitimately limit former owner's liability and simplify his future estate planning, there was no evidence of negotiation between the parties to suggest an arms' length deal, and former owner remained in ultimate control of the building at all times. *Wallasey Tenants Ass'n v. Varner*, 892 A.2d 1135, 2006 D.C. App. LEXIS 79 (2006).

A right of first refusal is not triggered, where the evidence indicates that motives of business convenience prompted the transfer of the leased property to the grantor's wholly owned corporation, or the transfer from one corporation to another corporation owned and controlled by the same interests; in each of these

situations, the conveyance does not result in a change in ownership or control and therefore does not invoke a right of first refusal on the property. *Wallasey Tenants Ass'n v. Varner*, 892 A.2d 1135, 2006 D.C. App. LEXIS 79 (2006).

The balance of interests in rental housing conversion has been struck by the legislature in establishing the requirements it did in the Tenant Opportunity to Purchase Act; and it is not for the courts to adjust that balance to correct perceived inequities. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

The words "or which is similar in effect" in provision of the Tenant Opportunity to Purchase Act (TOPA) entitling tenant to an opportunity to purchase the accommodation prior to its sale and defining "sale" to include master lease which meets some, but not all, statutory factors or which is similar in effect are designed to reach a document which is akin to a "master lease" and which meets some but not all of the factors codified. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

Landlord's agreement with university in connection with university's purchase of limited partnership interest in landlord was not a "sale" or "master lease" within the meaning of the Tenant Opportunity to Purchase Act (TOPA) which requires the owner of a housing accommodation to give to a tenant an opportunity to purchase the accommodation prior to its sale; the university acquired as a limited partner substantially less than a 51% interest in the partnership, did not have control or obligations with respect to equipment, supplies, permits, payment of taxes, maintenance and repairs, and liability insurance although it did have right to designate student or faculty member for vacancy, and its right to a first offer by limited partner desiring to sell interest was not an option to purchase. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

"Tenant opportunity to purchase" statute (TOTPS) did not permit the tenant to repudiate stipulation of settlement in landlord's suit for possession; if landlord was obligated to provide tenant with opportunity to purchase, her failure to do so violated TOTPS, not the agreement, which made no reference to TOTPS, and thus tenant's remedy was to seek enforcement of statute, rather than to repudiate agreement. D.C. Code 1981, § 45-1631(a). *Brown v. Hornstein*, 669 A.2d 139, 1996 D.C. App. LEXIS 1 (1996).

Statute purporting to clarify earlier legislation under which landlord was required to grant certain purchase rights to tenants in the event residential property was sold, so as to ensure that requirements of earlier statute would be deemed to apply to long-term leases,

not reflect legislative intent that term "sale," as used in original statute, contemplated lease arrangements. D.C. Code 1981, §§ 45-1601 et seq., 45-1631(b). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Attorney's tenancy in mixed-use building was commercial, rather than residential, contrary to attorney's contention that he was a residential tenant with a statutory right to purchase the premises, for purposes of lessor's action for possession, where attorney listed the premises as his business address and maintained a separate residence. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Contract Clause rights.

Transfer of stock in corporation that owned apartment building was not a sale of apartment building under provision of Rental Housing Conversion and Sale Act defining a sale as including the transfer within one year of 100% of the stock of a corporation which owned a building subject to the Act, for purposes of determining whether owner of building was required by the Act to first offer the building to the tenants, where only 99% of the stock of the corporation owning the apartment building was transferred. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

A period of sixty to seventy days could be treated as reasonable time for closing after expiration of the tenants' statutory rights to purchase the apartment building under the Rental Housing Conversion and Sale Act, even though the contract contained a clause making time of the essence; the original contract contemplated settlement within fifty-five to seventy days, the vendor did not demand performance from the purchaser until three weeks after termination of contract with the tenants association and did so only after purchaser had learned of the termination, and when the purchaser repeatedly proposed a sixty-day closing schedule, the vendor did not respond. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

Closing for sale of apartment building was to occur within a reasonable time after expiration of the tenants' statutory rights to purchase the building under the Rental Housing Conversion and Sale Act; the vendor and purchaser contemplated a delay in settlement in the event the tenants exercised their right to purchase the property, but they failed to provide a time for settlement once that delay came to an end. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

Contract requiring settlement ten days after expiration of financing contingency for sale of apartment building did not require purchaser to stand perpetually ready to close within ten days of the expiration of the tenants' statutory rights to purchase the building under the Rental Housing Conversion and Sale Act; such an interpretation would place a significant burden on the purchaser, and absent an express provision in the contract indicating that this was the parties' intent, it was untenable. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

For purposes of determining whether statute conferring rights on tenants to purchase their building in event of contemplated sale of building, as applied to master lease agreement covering building, violated the contract clause rights of lessor and lessee, agreement would be deemed to substantially impair contractual obligations; parties had reasonable expectation that they could obtain benefits bargained for under contract, as there had been no prior history of government regulations of apartment building leases. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 45-1601 et seq., 45-1631(b). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Act purporting to clarify statute granting tenants of residential building certain rights in connection with "sale" of building, by retroactively defining "sale" so as to include lease agreements, did not constitute an exercise of state police power sufficient to override Contract Clause rights of lessor and lessee under master lease of building; "clarifying" statute had been passed with specific lease arrangement between landlord and tenant in mind, indicating that purpose of statute was to vindicate interest of tenants in particular building, rather than tenants generally. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 45-1601 et seq., 45-1631(b). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Damages.

Tenant was not entitled to have set aside a sale of the rented premises to purchasers and an order of specific performance of a sale to her, in her action against landlord for his violation of her statutory right of first refusal, under the Tenant Opportunity to Purchase Act (TOPA), by his selling of the house to those other purchasers; tenant had not joined purchasers as defendants in her TOPA claim, her other claims against them had been stricken, as for tortious interference with a contract, and the bona fides of the landlord's sale to the purchasers had not been litigated at the trial on her TOPA claim.

Zanders v. Reid, 980 A.2d 1096, 2009 D.C. App. LEXIS 456 (2009).

Tenant was entitled to an award of monetary damages from her landlord for his violation of her statutory right of first refusal, under the Tenant Opportunity to Purchase Act (TOPA), by selling the house to other purchasers even though she had offered to match their bid. *Zanders v. Reid*, 980 A.2d 1096, 2009 D.C. App. LEXIS 456 (2009).

Lis pendens.

Notice of lis pendens filed by purchaser on apartment building was neither false nor malicious, as required in order for vendor to maintain a slander of title action against purchaser, as notice of lis pendens was originally filed when purchaser was seeking specific performance after vendor refused to close, parties then entered into an interim settlement agreement which stayed the action and extended the time for vendor to close to allow vendor an opportunity to provide tenants with a new notice of sale pursuant to Tenants' Opportunity to Purchase Act (TOPA), and when purchaser subsequently declined to close due to vendor's failure to provide insurable title free of tenants' claims and sought return of his deposit purchaser was willing to release his lis pendens if other security was provided for his deposit. *Psaromatis v. English Holdings I, L.L.C.*, 944 A.2d 472, 2008 D.C. App. LEXIS 98 (2008).

Partial release of mortgage.

Evidence was sufficient to establish that landlord did not act in bad faith when it failed to obtain a partial release of mortgage which encumbered rental units, in trial of action brought by tenants alleging that landlord breached contracts to purchase that landlord entered into with tenants pursuant to the Tenant Opportunity to Purchase Act (TOPA); landlord had entered into an agreement with a potential purchaser to sell the subject rental units and others if a Housing Assistance Payment (HAP) mortgage could be renewed in purchaser's name, landlord offered to sell units to tenants in order to comply with TOPA, contracts with tenants were subject to condition that landlord obtain a partial release of the mortgage, and there was evidence that agreement with purchaser did not close because mortgagee and Department of Housing and Urban Development (HUD) refused to release the mortgage, rather as a result of any lapse on the part of landlord. *BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 2009 D.C. App. LEXIS 597 (2009).

Remand.

Remand to trial court was warranted for purpose of determining whether landlord was entitled to award of sanctions under statute governing filing of lis pendens in action that

was brought by assignee of apartment building's tenant association's right to purchase under Tenant Opportunity to Purchase Act and that sought specific performance to compel good-faith bargaining by landlord relating to sale of building; trial court failed to give due consideration to whether sanctions were appropriate. 6921 Ga. Ave., N.W., Ltd. P'ship v. Universal Cmty. Dev., LLC, 954 A.2d 967, 2008 D.C. App. LEXIS 363 (2008).

Review.

Trial court's setting of purchase price of real property at \$1,840,000, which represented sale price offered to third-party prospective purchaser, rather than \$2,155,000 sale price listed in real estate agreement with tenants' association, was not abuse of discretion based on vendor's claim that sale price under agreement was never in dispute, in action brought by tenants' association for specific performance of agreement; vendor could not have been surprised that sale price would become an issue in action, since tenants' association's claim arose from their rights under Tenant Opportunity to Purchase Act (TOPA), which granted association right of first refusal and right to match bona fide offer of sale, and which limited tenants' association's deposit to five percent, vendor never provided tenants' association with copy of third-party contract, but disclosed that \$92,000 deposit check paid by third-party purchaser represented five percent of purchase price, which indicated that vendor's offer to sell to third party was \$315,000 less than sale price offered to tenants' association. Malik Corp. v. Tenacity Group, LLC, 961 A.2d 1057, 2008 D.C. App. LEXIS 481 (2008).

Sale.

Sale of apartment buildings in which each building was transferred by the seller to individual Limited Liability Companies (LLC) controlled by seller, and then, on same day, LLC's sold 99.99% interest to buyer and .01% interest to unrelated LLC created for purpose of facilitating transaction, constituted a sale within meaning of Tenants Opportunity to Purchase Act (TOPA), as would give tenants right to receive notice of sale and right to purchase at a price and on terms which represented a bona fide offer of sale; owner transferred absolute title in buildings to LLC entities as part of an agreement in which the buyer gained an interest in the property, and upon closing of the transaction the seller no longer owned the property and it received the proceeds of the sale from the buyer. Richman Towers Tenants' Ass'n v. Richman Towers LLC, 17 A.3d 590, 2011 D.C. App. LEXIS 157 (2011).

Transactions involving high-rise buildings component of apartment complex did not constitute a "sale" for purposes of the Rental Housing

Conversion and Sale Act, and thus owner was not required to make offer of sale to tenants, even if transactions were structured so as to avoid requirements of Act, where owner made transfer of absolute title for the buildings to a trust years before the owner entered into a contract with third party which ultimately resulted in complete transfer of ownership to the third party, and the transactions involving the high-rise buildings did not result in transfer of the high-rise buildings within one year. Waterside Towers Resident Ass'n v. Trilon Plaza Co., 2 A.3d 1084, 2010 D.C. App. LEXIS 502 (2010).

Transaction involving townhouse component of apartment complex constituted a "sale," rather than a mere restructuring, for purposes of the Rental Housing Conversion and Sale Act, triggering Act's requirement of notice and bona fide offer of sale to tenants, where contract specifically provided for the transfer of 100% of owner's interest in the townhouses to a wholly-owned subsidiary trust and owner's promise to third party to transfer absolute title to trust was in exchange for valuable consideration from third party. Waterside Towers Resident Ass'n v. Trilon Plaza Co., 2 A.3d 1084, 2010 D.C. App. LEXIS 502 (2010).

Transfer of residential apartment building by deeding it to trust to be held for benefit of limited liability company (LLC) owned by transferor was not a "sale" under prior version of statute that conditioned sale of housing accommodation on owner giving tenant bona fide opportunity to purchase the accommodation, and, thus, tenants did not have right of first refusal to buy building, although tenants argued that transfer originated out of unconsummated, arms-length transaction involving transferor and non-party offeror; transaction was a change in form of ownership, not sale. Alcazar Tenants' Ass'n v. Smith Prop. Holdings, L.P., 981 A.2d 1202, 2009 D.C. App. LEXIS 455 (2009).

To be a "sale" as the term is used in the Rental Housing Conversion and Sale Act, a property transaction must be an absolute transfer or amount to the passing of general and absolute title. Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., L.P., 894 A.2d 1113, 2006 D.C. App. LEXIS 143 (2006).

Apartment buildings owners' transfer from one owner to another of 95% of ownership in buildings was not a "sale" under the Rental Housing Conversion and Sale Act such that owner was required to give tenants notice and an opportunity to purchase at a price and on terms which represent a bona fide offer of sale, as transaction was not the transfer of absolute title or complete ownership. Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., L.P., 894 A.2d 1113, 2006 D.C. App. LEXIS 143 (2006).

Term "bona fide offer of sale" in Rental Housing Conversion and Sale Act simply means an

offer of sale made in objective, honest good faith, and does not require that the offer reflect the appraised or fair market value of the property; term was term of art, other sections in Act supported that conclusion, including sections which used term “bona fide” but modified the term, and legislative history showed that appraised value provision was considered but not included in final bill. 1618 Twenty-First St. Tenants’ Ass’n v. Phillips Collection, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

An offer does not have to reflect appraised value or market value to be a “bona fide offer of sale” under the Rental Housing Conversion and Sale Act. 1618 Twenty-First St. Tenants’ Ass’n v. Phillips Collection, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

Apartment building purchaser’s offer to tenants of \$7.8 million was a “bona fide offer of sale” under the Rental Housing Conversion and Sale Act; property had unique value to purchaser, which was adjacent to purchaser’s existing building and was intended to be used as art study center rather than as condominiums or retail development, and sale figure was based on price it would cost to purchase similar suitable space near existing building. 1618 Twenty-First St. Tenants’ Ass’n v. Phillips Col-

lection, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

Specific performance.

Purchaser was not ready, willing and able to perform on contract to purchase apartment building, and therefore, was not entitled to specific performance of contract; he failed to tender earnest money, he attempted to forestall another contract and instead sought to purchase property at pending foreclosure sale, and he took no action to ensure that seller cleared cloud on title. 3511 13th St., LLC v. Lewis, 993 A.2d 590, 2010 D.C. App. LEXIS 209 (2010).

Summary judgment.

Genuine issues of material fact as to whether document that landlord sent to residential tenants’ association would have been reasonably understood by landlord and association as a firm offer of sale or instead as an invitation to negotiate precluded summary judgment for landlord, in association’s action seeking specific performance of alleged contract for association to purchase the eight-unit rental property and alleging landlord had violated the Tenant Opportunity to Purchase Act (TOPA). 1836 S St. Tenants Ass’n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

§ 42-3404.02a. Registration of a tenant organization.

In a housing accommodation of 5 or more units, the tenants may form and register the tenant organization with the Mayor, pursuant to § 42-3404.11, at any time; provided, that this section shall not be construed to alter the time periods within which a tenant organization may exercise the rights afforded by this chapter. A tenant organization may file a petition for relief pursuant to § 42-3405.03 or § 42-3405.03a.

(Sept. 10, 1980, D.C. Law 3-86, § 402a, formerly § 402b, as added July 22, 2005, D.C. Law 16-15, § 2(c), 52 DCR 6885; renumbered Mar. 2, 2007, D.C. Law 16-191, § 101(b), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 renumbered the section.

Legislative history of Law 16-15. — For Law 16-15, see notes following § s 42-3401.03.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

§ 42-3404.03. Offer of sale.

The owner shall provide each tenant a written copy of the offer of sale by certified mail and post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation if it consists of more than one unit. The owner shall provide the Mayor with a written copy of the offer of sale by certified mail or by filing it with the Conversion and Sale Administrator within the Department of Housing and Community Development. The owner

shall certify to the Mayor that the Mayor and each tenant were provided copies of the offer of sale on the same day. An offer includes, at a minimum:

- (1) The asking price and material terms of the sale;
- (2) A statement that the tenant has the right to purchase the accommodation under this chapter and a summary of tenant rights and sources of technical assistance as published in the D.C. Register by the Mayor; Provided, however, that if no such statement and summary have been published, the owner will be deemed in compliance with this paragraph;
- (3) A statement as to whether a contract with a third party exists for sale of the accommodation and that the owner shall make a copy available to the tenant within 7 days after receiving a request; and
- (4) A statement that the owner shall make available to the tenant a floor plan of the building and an itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the 2 preceding calendar years within 7 days after receiving a request. The statement shall also indicate that the owner shall, at the same time, make available the most recent rent roll, list of tenants, and list of vacant apartments. If the owner does not have a floor plan, the owner may meet the requirement to provide a floor plan by stating in writing to the tenant that the owner does not have a floor plan.

(Sept. 10, 1980, D.C. Law 3-86, § 403, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(i), 30 DCR 4866; Sept. 6, 1995, D.C. Law 11-31, § 3(j), 42 DCR 3239; Oct. 21, 2008, D.C. Law 17-234, § 2(a), 55 DCR 9014.)

Prior Codifications. — 1981 Ed., § 45-1632.

Effect of amendments. — D.C. Law 17-234 rewrote the lead-in language, which had read as follows: “The owner shall provide each tenant and the Mayor a written copy of the offer of sale by first class mail and post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation if it consists of more than 1 unit. An offer includes, at a minimum:”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(j) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(j) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(j) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(j) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Re-

cess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 17-234. — Law 17-234, the “Tenant Opportunity to Purchase Notification Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-640 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on July 28, 2008, it was assigned Act No. 17-475 and transmitted to both Houses of Congress for its review. D.C. Law 17-234 became effective on October 21, 2008.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(j) of D.C. Law 10-144 purported to amend (4) of this section to read as follows: "The owner shall provide each tenant and the Mayor a written copy of the offer of sale by first class mail and post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation if it consists of more than 1 unit. An offer includes, at a minimum: "(4) A statement that the owner shall make available

to the tenant a floor plan of the building and an itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the 2 preceding calendar years within 7 days after receiving a request. The statement shall also indicate that the owner shall, at the same time, make available the most recent rent roll, list of tenants, and list of vacant apartments. If the new owner does not have a floor plan, the owner may meet the requirement to provide a floor plan by stating in writing to the tenant that the owner does not have a floor plan."

CASE NOTES

ANALYSIS

In general.
Review.

In general.

Tenants were not required to show they are financially capable of purchasing property or to form tenant organization before suing for landlord's failure to provide notice of intent to sell rental property, as required under District of Columbia Rental Housing Conversion and Sale Act; Act only requires tenants to form organization after notice is given and financial capacity to purchase is irrelevant to requirement of notice. D.C. Code 1981, §§ 45-1631, 45-1632, 45-1640(1)(C). *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

If the landlord proposes to sell the property or discontinue its use as rental housing, the Tenant Opportunity to Purchase Act (TOPA) requires the landlord to extend a firm offer of sale that is capable of immediate, binding acceptance by the tenant, as opposed to merely extending an invitation to negotiate a sale within a reasonable time period. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

Apartment building owners' failure to comply with request for detailed statement of operating expenses did not toll running of negotiation period where tenant association did not make request until after it had submitted two contract proposals for purchase of building more than 120 days after beginning of negotiation period. D.C. Code 1981, §§ 45-1632(4), 45-1637, 45-1640(2). *Lealand Tenants Ass'n v.*

Johnson, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

Negotiation period was not extended by plaintiff's request for operating expense statement where the request was not made until after the expiration of the negotiating period provided by § 45-1640(2). *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988).

Review.

Trial court's setting of purchase price of real property at \$1,840,000, which represented sale price offered to third-party prospective purchaser, rather than \$2,155,000 sale price listed in real estate agreement with tenants' association, was not abuse of discretion based on vendor's claim that sale price under agreement was never in dispute, in action brought by tenants' association for specific performance of agreement; vendor could not have been surprised that sale price would become an issue in action, since tenants' association's claim arose from their rights under Tenant Opportunity to Purchase Act (TOPA), which granted association right of first refusal and right to match bona fide offer of sale, and which limited tenants' association's deposit to five percent, vendor never provided tenants' association with copy of third-party contract, but disclosed that \$92,000 deposit check paid by third-party purchaser represented five percent of purchase price, which indicated that vendor's offer to sell to third party was \$315,000 less than sale price offered to tenants' association. *Malik Corp. v. Tenacity Group, LLC*, 961 A.2d 1057, 2008 D.C. App. LEXIS 481 (2008).

§ 42-3404.04. Third party rights.

The right of a third party to purchase an accommodation is conditional upon exercise of tenant rights under this subchapter. The time periods for negotiation of a contract of sale and for settlement under this subchapter are minimum periods, and the owner may afford the tenants a reasonable extension of such period, without liability under a third party contract. Third

party purchasers are presumed to act with full knowledge of tenant rights and public policy under this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 404, 27 DCR 2975.)

Section references. — This section is referred to in §§ 42-2851.04 and 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1633.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Histor-

ical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Contract negotiations.

In general.

Specific performance.

Contract negotiations.

The right of tenants, under Tenants Opportunity to Purchase Act (TOPA), to receive notice of the sale of the building in which they reside and the right to then purchase at a price and on terms which represented a bona fide offer of sale, applied to all sales of the property to a third party regardless of the purpose of the sale; although punctuation of statute suggested the rights were limited to sales for the purpose of demolition or discontinuance of housing use, legislative history clearly demonstrated that the council intended the rights to apply to all sales, subsequent amendments to the statute would have been pointless if the council understood the rights to be so limited, and limiting the rights in such a manner would render other sections of the statute as having no effect. *Richman Towers Tenants' Ass'n v. Richman Towers LLC*, 17 A.3d 590, 2011 D.C. App. LEXIS 157 (2011).

A period of sixty to seventy days could be treated as reasonable time for closing after expiration of the tenants' statutory rights to purchase the apartment building under the Rental Housing Conversion and Sale Act, even though the contract contained a clause making time of the essence; the original contract contemplated settlement within fifty-five to seventy days, the vendor did not demand performance from the purchaser until three weeks after termination of contract with the tenants association and did so only after purchaser had learned of the termination, and when the purchaser repeatedly proposed a sixty-day closing schedule, the vendor did not respond. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

Contract requiring settlement ten days after expiration of financing contingency for sale of apartment building did not require purchaser

to stand perpetually ready to close within ten days of the expiration of the tenants' statutory rights to purchase the building under the Rental Housing Conversion and Sale Act; such an interpretation would place a significant burden on the purchaser, and absent an express provision in the contract indicating that this was the parties' intent, it was untenable. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

Closing for sale of apartment building was to occur within a reasonable time after expiration of the tenants' statutory rights to purchase the building under the Rental Housing Conversion and Sale Act; the vendor and purchaser contemplated a delay in settlement in the event the tenants exercised their right to purchase the property, but they failed to provide a time for settlement once that delay came to an end. *Independence Mgmt. Co. v. Anderson & Summers, LLC*, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

A tenant does not have a right to extend or revive the 15-day period under the Rental Housing Conversion and Sale Act in which she may exercise her right of first refusal after she has received a copy of a contract of sale for the leased property; Act only allows extension of time for negotiation and settlement with a tenant who has expressed in writing an interest in purchasing the property. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Apartment building owners could take into account terms of proposed purchase contract by third party during course of negotiations with tenant organization during statutorily required first refusal period; when third-party contract was received by tenant organization after negotiations had begun, it was permissible for owners to ask for nonmaterial terms similar to those offered by the third party. *D.C. Code 1981, § 45-1637. Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

Apartment building owners did not negotiate in bad faith when they used third party's pur-

chase contract proposal as basis for rejecting tenant organization's second purchase contract proposal, and could proceed with sale of apartment building to third parties when tenant organization failed to exercise 15-day right of first refusal. D.C. Code 1981, §§ 45-1634, 45-1637. Lealand Tenants Ass'n v. Johnson, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

In general.

Rental Housing Conversion and Sale Act does not shield a landlord from third-party liability when the landlord gratuitously extends a tenant's statutory deadline for exercising her rights of first refusal after being provided with a copy of a contract of sale with a third party. Coburn v. Heggestad, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Factual issue concerning landlord's good faith in negotiating precluded summary judgment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). Green v. Gibson, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

ment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). Green v. Gibson, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Specific performance.

A court has discretion to grant such equitable relief as specific performance, under the Tenant Opportunity to Purchase Act (TOPA), in an action by the tenant against a third party purchaser if the tenant establishes that the third party had actual or constructive knowledge of the tenant's superior rights at the time it acquired the property, in other words, the third party was not a bona fide purchaser. Zanders v. Reid, 980 A.2d 1096, 2009 D.C. App. LEXIS 456 (2009).

§ 42-3404.05. Contract negotiation.

(a) *Bargaining in good faith.* — The tenant and owner shall bargain in good faith. The following constitute prima facie evidence of bargaining without good faith:

(1) The failure of an owner to offer the tenant a price or term at least as favorable as that offered to a third party, within the periods specified in §§ 42-3404.09(4), 42-3404.10(4), and 42-3404.11(4), respectively, without a reasonable justification for so doing;

(2) The failure of an owner to make a contract with the tenant which substantially conforms with the price and terms of a third party contract within the time periods specified in §§ 42-3404.09(4), 42-3404.10(4), and 42-3404.11(4), respectively, without a reasonable justification for so doing; or

(3) The intentional failure of a tenant or an owner to comply with the provisions of this subchapter.

(a-1) *Reduced price.* — If the owner sells or contracts to sell the accommodation to a third party for a price more than 10% less than the price offered to the tenant or for other terms which would constitute bargaining without good faith, the owner shall comply anew with all requirements of §§ 42-3404.09, 42-3404.10, and 42-3404.11, as applicable.

(a-2) *Financial assurances.* — The owner may not require the tenant to prove financial ability to perform as a prerequisite to entering into a contract. The owner may not require the tenant to pay the purchase price in installments unless the owner provides deferred purchase money financing on terms reasonably acceptable to the tenant. The owner may require the tenant to prove that the tenant, either alone or in conjunction with a third party, has comparable financial ability to the third-party contractor before the owner will be required to grant deferred purchase money financing to the tenant on the same terms and conditions agreed between the owner and the third-party contractor. If the tenant can prove comparable financial ability alone, the owner may not require the tenant to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as

a prerequisite to the owner granting deferred purchase money financing at settlement.

(a-3) *Transfers of interest in a partnership or corporation and master leases.* — In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale within the meaning of § 42-3404.02, but which does not involve a transfer of record title to the real property, the owner shall be bargaining in good faith if the owner offers the tenant the opportunity to acquire record title to the real property or offers the tenant the opportunity to match the type of transfer or agreement entered into with the third party. With respect to either type of offer, all provisions of this subchapter apply.

(b) *Deposit.* — The owner shall not require the tenant to pay a deposit of more than 5% of the contract sales price in order to make a contract. The deposit is refundable in the event of a good faith failure of the tenant to perform under the contract.

(Sept. 10, 1980, D.C. Law 3-86, § 405, 27 DCR 2975; Sept. 26, 1980, D.C. Law 3-106, § 3(a), 27 DCR 3758; Sept. 29, 1988, D.C. Law 7-154, § 2(e), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(k), 42 DCR 3239.)

Section references. — This section is referred to in § 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1634.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(k) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-106. — Law 3-106, the "Rental Housing Act of 1977 Extension Act of 1980," was introduced in Council and assigned Bill No. 3-326, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 15, 1980, and July 29, 1980, respectively. Signed by the Mayor on July

31, 1980, it was assigned Act No. 3-231 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(k) of D.C. Law 10-144 purported to insert new (a-1), (a-2) and (a-3) of this section to read as follows:

"(a-1) Reduced price. If the owner sells or contracts to sell the accommodation to a third party for a price more than 10% less than the price offered to the tenant or for other terms which would constitute bargaining without good faith, the owner shall comply anew with all requirements of §§ 45-1638, 45-1639, or 45-1640 as applicable.

"(a-2) Financial assurances. The owner may not require the tenant to prove financial ability to perform as a prerequisite to entering into a contract. The owner may not require the tenant to pay the purchase price in installments unless the owner provides deferred purchase money financing on terms reasonably accept-

able to the tenant. The owner may require the tenant to prove that the tenant, either alone or in conjunction with a third party, has comparable financial ability to the third party contractor before the owner will be required to grant deferred purchase money financing to the tenant on the same terms and conditions agreed between the owner and the third party contractor. If the tenant can prove comparable financial ability alone, the owner may not require the tenant to secure a third party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the owner granting deferred purchase money financing at settlement.

“(a-3) Transfers of interest in a partnership or corporation and master leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale within the meaning of § 45-1631(c) but which does not involve a transfer of record title to the real property, the owner shall be bargaining in good faith if the owner offers the tenant the opportunity to acquire record title to the real property or offers the tenant the opportunity to match the type of transfer or agreement entered into with the third party. With respect to either type of offer, all provisions of this subchapter apply.”

CASE NOTES

ANALYSIS

Good faith.
In general.
Right of first refusal.

Good faith.

Under the Tenant Opportunity to Purchase Act (TOPA), tenant who failed to perform under contract for sale of home could not be made to forfeit his deposit absent a finding of bad faith, and thus proceedings on tenant's TOPA action against landlord would be remanded for trial court to determine whether tenant failed to perform in good faith. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

Requirement of Rental Housing Conversion and Sale Act, that landlord and tenant bargain in “good faith” regarding any sale of leased premises, prior to sale of property of which leased premises is a part, is violated when (1) landlord fails to present tenant with price or terms as favorable as those offered to third party; (2) landlord fails to contract with tenant on same price/terms within reasonable time period; (3) owner or tenant intentionally fails to comply with statute. D.C. Code 1981, § 45-1634(a)(1-3). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Factual issue concerning landlord's good faith in negotiating precluded summary judgment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Apartment building owners did not negotiate in bad faith when they used third party's purchase contract proposal as basis for rejecting tenant organization's second purchase contract proposal, and could proceed with sale of apartment building to third parties when tenant organization failed to exercise 15-day right of

first refusal. D.C. Code 1981, §§ 45-1634, 45-1637. *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

In general.

Landlords may not be forced under District of Columbia Rental Housing Conversion and Sale Act to sell property to tenants for lower price than that offered by third party. D.C. Code 1981, § 45-1634. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Under Rental Housing Conversion and Sale Act, statutory method afforded tenants to purchase accommodations of five or more units gives individual tenant no opportunity to negotiate with owner or to purchase in tenant's own right; tenant organization is sole entity that can conduct with owner negotiations required by Act. D.C. Code 1981, §§ 45-1634, 45-1638, 45-1639. *Stanton v. Gerstenfeld*, 582 A.2d 242, 1990 D.C. App. LEXIS 271 (1990).

Once apartment building owners by their actions extended negotiation period for tenant organization to negotiate contract of sale, statutory good-faith requirement made it impermissible for owners not to give tenant organization an opportunity to respond to owners' objections to first contract proposal, extending negotiation period until date that owners rejected tenant organization's second contract proposal. D.C. Code 1981, § 45-1634. *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

Right of first refusal.

Provision of statute creating tenant's right of first refusal makes the obligation of good faith and the presumption against good faith which inheres where the owner fails to make a contract with a tenant applicable to the exercise of first refusal. D.C. Code 1981, §§ 45-1634, 45-1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Statutory right of first refusal and opportunity to purchase require only substantial con-

formity, rather than absolute identity or perfect match, between the tenant's exercise of the right and the third-party offer. D.C. Code 1981, §§ 45-1634, 45-1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Even under statutory right of first refusal

granted to tenant, property owner has freedom to determine the terms upon the owner is willing to settle at all. D.C. Code 1981, §§ 45-1634, 45-1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

§ 42-3404.06. Exercise or assignment of rights.

The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable.

(Sept. 10, 1980, D.C. Law 3-86, § 406, 27 DCR 2975; Sept. 6, 1995, D.C. Law 11-31, § 3(l), 42 DCR 3239.)

Section references. — This section is referred to in § 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1635.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(l) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Histor-

ical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(l) of D.C. Law 10-144 purported to amend this section to read as follows: "The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable."

CASE NOTES

ANALYSIS

Assignment of rights.
In general.

Assignment of rights.

A tenant's assignment of his rights under the Tenant Opportunity to Purchase Act is immediate and complete upon the execution of the

assignment document. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Fact that tenants of four-unit rental accommodation moved out after assigning their rights under the Tenant Opportunity to Purchase Act did not cause assignment to lapse. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Tenant Opportunity to Purchase Act permits tenants to assign their rights under Act to anybody and leaves the choice of the assignee, and the consideration to be received from that assignee, in the assigning tenant's absolute and unfettered discretion. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Real estate broker effectively became tenant of rental accommodation for purposes of the Tenant Opportunity to Purchase Act when tenants assigned their rights under Act to him. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Tenants' assignment of rights under the Tenant Opportunity to Purchase Act to real estate broker who had offered to purchase four-unit rental accommodation on terms agreeable to

owner was not void as a matter of public policy; Act permitted assignment of rights to anybody. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

In general.

Owner of two-to-four rental unit accommodation was not free to accept offer to purchase from third party, who effectively became tenant under Rental Housing Conversion and Sale Act by assignment of rights from tenant, before negotiating for 90-day statutory period with other tenant interested in buying, even though latter tenant's timely statement of interest was not submitted until after third party had made a contract offer. *Medrano v. Osterman*, 885 A.2d 310, 2005 D.C. App. LEXIS 534 (2005).

§ 42-3404.07. Waiver of rights.

An owner shall not request, and a tenant may not grant, a waiver of the right to receive an offer of sale under this subchapter. An owner shall not require waiver of any other right under this subchapter except in exchange for consideration which the tenant, in the tenant's sole discretion, finds acceptable.

(Sept. 10, 1980, D.C. Law 3-86, § 407, 27 DCR 2975; Sept. 6, 1995, D.C. Law 11-31, § 3(m), 42 DCR 3239.)

Section references. — This section is referred to in § 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1636.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(m) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(m) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(m) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(m) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(m) of D.C. Law 10-144 purported to amend this section to read as follows: "An owner shall not request, and a tenant may not grant, a waiver of the right to receive an offer of sale under this subchapter. An owner shall not require waiver of any other right under this subchapter except in exchange for consideration which the tenant, in the tenant's sole discretion, finds acceptable."

§ 42-3404.08. Right of first refusal.

In addition to any and all other rights specified in this subchapter, a tenant or tenant organization shall also have the right of first refusal during the 15

days after the tenant or tenant organization has received from the owner a valid sales contract to purchase by a third party. If the contract is received during the negotiation period pursuant to § 42-3404.09(2), § 42-3404.10(2), or § 42-3404.11(2), the 15-day period will begin to run at the end of the negotiation period. In exercising rights pursuant to this section, all rights specified in this subchapter shall apply except the minimum negotiation periods specified in §§ 42-3404.09(2), 42-3404.10(2), and 42-3404.11(2).

(Sept. 10, 1980, D.C. Law 3-86, § 408, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(j), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(f), 35 DCR 5715.)

Prior Codifications. — 1981 Ed., § 45-1637.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Evidence.
Federal preemption.
In general.
Instructions.
Offer of sale.
Summary judgment.
Third-party contracts.

Evidence.

Error was harmless as to admission, in tenant organization's action seeking rescission of sale of apartment building based on lack of statutory notice of offer of sale, which notice related to tenants' statutory right of first refusal, of hearsay letter from District of Columbia's Department of Consumer and Regulatory Affairs (DCRA) to vendor, stating that Department's file showed that statutory notice had been properly delivered to tenants; jurors were instructed not to consider letter as proof of notice, and counsel for vendor and purchaser did not cite the letter during closing arguments as proof of notice. 3511 13th St. Tenants' Ass'n v. 3511 13th St., N.W. Residences, LLC, 922 A.2d 439, 2007 D.C. App. LEXIS 226 (2007).

Federal preemption.

Defaulting mortgagor whose mortgage had been insured by Department of Housing and Urban Development (HUD) did not have right of first refusal to purchase foreclosed property under local law granting tenants such rights, even though mortgagor had occupied property

after default under month-to-month lease and HUD regulation provided that tenants in occupancy would be offered such right if required by local law; provision in same regulation, indicating that defaulting mortgagors cannot have right of first refusal, was controlling and preempted local law. D.C. Code 1981, § 45-1637; 24 C.F.R. § 291.100(a)(2, 4). *Booker v. Edwards*, 99 F.3d 1165, 1996 U.S. App. LEXIS 29119 (C.A.D.C. 1996).

Determination that District of Columbia law granting tenants right of first refusal when leased premises are sold was preempted Department of Housing and Urban Development (HUD) regulations excluding defaulting mortgagors, including those who become tenants following default, from tenants to whom right of first refusal could be offered was proper, inasmuch as Congress gave HUD broad authority to manage properties acquired through its operations and regulations completely covered issue of first right of refusal, including preemption. National Housing Act, § 204(g), 12 U.S.C. § 1710(g); D.C. Code 1981, § 45-1637; 24 C.F.R. § 291.100(a)(2, 4). *Booker v. Edwards*, 99 F.3d 1165, 1996 U.S. App. LEXIS 29119 (C.A.D.C. 1996).

In general.

Simultaneous assertion of conflicting rights to purchase by tenants or their assignees of a single rental unit was sufficient reason under the Tenant Opportunity to Purchase Act (TOPA) for owner to reject both offers to buy

rental unit; owner was only required to consider one tenant-offer for the unit prior to accepting a third-party offer. *Morrison v. Branch Banking & Trust Co.*, 25 A.3d 930, 2011 D.C. App. LEXIS 442 (2011).

Under the Tenant Opportunity to Purchase Act (TOPA), an owner was required to entertain only one tenant-offer to buy a single-family accommodation, one tenant-offer from each rental unit to buy a two-four unit accommodation, and one tenant-offer, made collectively through a tenant organization, to buy an accommodation housing more than four rental units prior to accepting a third-party purchase offer; the rubric "single-family accommodation," the repeated statutory reference to "the tenant," and the statute's similar reference to a single "statement of interest" all implied strongly that the owner's obligation was to negotiate just once regarding the sale offer, not with multiple tenants of the dwelling each offering to purchase, a reading bolstered further by the definition of "tenant" as "including the plural," and when TOPA's drafters wanted to allow multiple and competing offers for the same housing accommodations, they did so expressly. *Morrison v. Branch Banking & Trust Co.*, 25 A.3d 930, 2011 D.C. App. LEXIS 442 (2011).

A residential tenant's right of first refusal, under the Tenant Opportunity to Purchase Act (TOPA), with respect to purchasing the rental property requires only substantial conformity, rather than absolute identity or perfect match, between the tenant's exercise of the right and the third party offer. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

A tenant does not have a right to extend or revive the 15-day period under the Rental Housing Conversion and Sale Act in which she may exercise her right of first refusal after she has received a copy of a contract of sale for the leased property; Act only allows extension of time for negotiation and settlement with a tenant who has expressed in writing an interest in purchasing the property. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Factual issue concerning landlord's good faith in negotiating precluded summary judgment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Provision of statute creating tenant's right of first refusal makes the obligation of good faith and the presumption against good faith which inheres where the owner fails to make a contract with a tenant applicable to the exercise of first refusal. D.C. Code 1981, §§ 45-1634, 45-

1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Statutory right of first refusal and opportunity to purchase require only substantial conformity, rather than absolute identity or perfect match, between the tenant's exercise of the right and the third-party offer. D.C. Code 1981, §§ 45-1634, 45-1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Even under statutory right of first refusal granted to tenant, property owner has freedom to determine the terms upon the owner is willing to settle at all. D.C. Code 1981, §§ 45-1634, 45-1637. *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Instructions.

Provision in statutes addressing conversion or sale of rental housing, stating that purposes of such statutes favored resolution of ambiguity by hearing officer or court toward the end of strengthening the legal rights of tenants or tenant organizations to maximum extent permissible under law, applied only to interpretation of such statutes and therefore did not warrant instruction, in action by tenant organization to rescind sale of apartment building based on alleged lack of statutory notice of sale, which notice related to tenants' statutory right of first refusal, that ambiguities in evidence as to whether tenants received notice had to be resolved in their favor. 3511 13th St. Tenants' Ass'n v. 3511 13th St., N.W. Residences, LLC, 922 A.2d 439, 2007 D.C. App. LEXIS 226 (2007).

Offer of sale.

A residential tenant's right of first refusal, under the Tenant Opportunity to Purchase Act (TOPA), with respect to purchasing the rental property does not ripen into the right to receive an offer of sale from the landlord unless and until the owner receives an acceptable offer of purchase from a third party. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

Summary judgment.

Genuine issue of material fact as to whether third-party purchaser was bona fide purchaser of rental housing project precluded judgment on the pleadings for third-party purchaser, in tenants association's action against third-party purchaser for declaratory judgment and injunctive relief, seeking to enforce its right of first refusal, under Rental Housing and Sale Conversion Act, with respect to prior owner's sale of rental housing project to third-party purchaser. *Wilson Courts Tenants Ass'n, Appellant v. 523-525 Mellon St., LLC*, 924 A.2d 289, 2007 D.C. App. LEXIS 237 (2007).

Third-party contracts.

Sale of rental housing project to third-party purchaser did not extinguish tenants' right of

first refusal under Rental Housing and Sale Conversion Act, and thus, tenants association, as holder of conditional option to purchase pursuant to Act, was entitled to enforce its statutory rights in action for specific performance against third-party purchaser, who was presumed under the Act to have purchased with constructive notice of tenants' option. *Wilson Courts Tenants Ass'n, Appellant v. 523-525 Mellon St., LLC*, 924 A.2d 289, 2007 D.C. App. LEXIS 237 (2007).

Tenant was not excused from exercising her right of first refusal within the 15-day period under the Rental Housing Conversion and Sale Act on grounds that copy of contract of sale provided to her did not include purchaser's printed name and contract omitted a letter referenced by a hand-written footnote in the contract, as contract contained all the terms relevant to tenant's decision on whether to buy the home, contract included purchaser's legally operative signature, referenced letter only affected dispersal of net proceeds and did not impose any substantive rights or obligations on the purchaser, if tenant had been concerned whether omissions affected material terms of

contract she had ample time to make the appropriate inquiries, and tenant did not make inquiries. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Apartment building owners could take into account terms of proposed purchase contract by third party during course of negotiations with tenant organization during statutorily required first refusal period; when third-party contract was received by tenant organization after negotiations had begun, it was permissible for owners to ask for nonmaterial terms similar to those offered by the third party. D.C. Code 1981, § 45-1637. *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

Apartment building owners did not negotiate in bad faith when they used third party's purchase contract proposal as basis for rejecting tenant organization's second purchase contract proposal, and could proceed with sale of apartment building to third parties when tenant organization failed to exercise 15-day right of first refusal. D.C. Code 1981, §§ 45-1634, 45-1637. *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

§ 42-3404.09. Single-family accommodations.

The following provisions apply to single-family accommodations:

(1) *Written statement of interest.* — Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, or upon the Mayor's receipt of a copy of the written offer of sale, whichever is later, the tenant shall have 30 days to provide the owner and the Mayor, by hand or by sending by certified mail, with a written statement of interest. The statement of interest shall be a clear expression of interest on the part of the tenant to exercise the right to purchase as specified in this subchapter;

(2) *Negotiation period.* — If a tenant has provided a written statement of interest in accordance with paragraph (1) of this section, the owner shall afford the tenant a reasonable period to negotiate a contract of sale, and shall not require less than 60 days, not including the 30 days provided by paragraph (1) of this section. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day;

(3) *Time before settlement.* — The owner shall afford the tenant a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 60 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 90 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(4) *Lapse of time.* — If 180 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the

accommodation, the owner shall comply anew with the terms of this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 409, 27 DCR 2975; Sept. 29, 1988, D.C. Law 7-154, § 2(g), 35 DCR 5715; Oct. 21, 2008, D.C. Law 17-234, § 2(b), 55 DCR 9014; July 23, 2010, D.C. Law 18-193, § 2(a), 57 DCR 4510.)

Section references. — This section is referred to in §§ 42-3404.05, 42-3404.08 and 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1638.

Effect of amendments. — D.C. Law 17-234, in par. (1), rewrote the first sentence, which had read as follows: "Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, the tenant shall have 30 days to provide the owner and the Mayor with a written statement of interest."

D.C. Law 18-193, in par. (1), substituted "and the Mayor, by hand or by sending by certified mail," for "and the Mayor".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Tenant Opportunity to Purchase Preservation Clarification Temporary Amendment Act of 2009 (D.C. Law 18-23, July 7, 2009, law notification 56 DCR 6125).

For temporary (225 day) amendment of section, see § 2(a) of Tenant Opportunity to Purchase Preservation Clarification Temporary Amendment Act of 2010 (D.C. Law 18-177, May 27, 2010, law notification 57 DCR 6039).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Tenant Opportunity to Purchase Preservation Clarification Emergency Amendment Act of 2009 (D.C. Act 18-38, March 21, 2009, 56 DCR 2668).

For temporary (90 day) amendment of section, see § 2(a) of Tenant Opportunity to Pur-

chase Preservation Clarification Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-109, June 18, 2009, 56 DCR 4934).

For temporary (90 day) amendment of section, see § 2(a) of Tenant Opportunity to Purchase Preservation Clarification Emergency Amendment Act of 2010 (D.C. Act 18-327, March 18, 2010, 57 DCR 2544).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 17-234. — For Law 17-234, see notes following § 42-3404.03.

Legislative history of Law 18-193. — Law 18-193, the "Tenant Opportunity to Purchase Preservation Clarification Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-179, which was referred to the Committee on Housing Safety and Workforce Development. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 19, 2010, it was assigned Act No. 18-404 and transmitted to both Houses of Congress for its review. D.C. Law 18-193 became effective on July 23,

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Construction and application.

In general.

Review.

Settlement period.

Construction and application.

Residential property was a single-family dwelling, such that under the Tenant Opportunity to Purchase Act (TOPA) the settlement period applicable to single-family dwelling applied to sale of the property; tenant prevailed in previous action before the Department of Consumer and Regulatory Affairs (DCRA) because the property was a single-family home that landlord illegally rented as a two-unit dwelling,

amended registration filed by landlord identified the property as single-family, and property was situated in district zoned to prohibit two-family homes. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

In general.

Purposes of provisions in Rental Housing Conversion and Sale Act allowing extensions of time for negotiation and settlement with a tenant who has expressed in writing an interest in purchasing the property is to insure that a tenant is given a fair opportunity to purchase and that this opportunity is not lost because of a surprise sale to another person; once a tenant has seized his or her opportunity to act, the landlord should be able to afford reasonable

extensions of time without worrying that the third party will thwart the tenant by suing the landlord. *Coburn v. Heggstad*, 817 A.2d 813, 2003 D.C. App. LEXIS 88 (2003).

Factual issue concerning landlord's good faith in negotiating precluded summary judgment in action by tenant claiming violation of statutory rights of opportunity to purchase and first refusal. D.C. Code 1981, §§ 45-1631(a), 45-1633, 45-1634(a), 45-1637, 45-1638(2). *Green v. Gibson*, 613 A.2d 361, 1992 D.C. App. LEXIS 228 (1992).

Review.

Trial court's reliance on a rule of civil procedure to extend the 30-day time period prescribed by Tenant Opportunity to Purchase Act (TOPA) to provide landlord with written statement of interest to purchase single-family rental home, after having received landlord's written offer of sale, was improper. *Tippett v. Daly*, 10 A.3d 1123, 2010 D.C. App. LEXIS 737 (2010).

Amendment to provision of Tenant Opportunity to Purchase Act (TOPA) stating that a tenant living in a single-family rental home, upon receipt of written offer of sale from the owner, has 30 days to provide the owner with written statement of interest, by inserting the words "by hand or by sending by certified mail" after the phrase "provide the owner and the Mayor" did not have retroactive effect to case on appeal; district council may have clarified TOPA for the future, but it did not purport to enact legislation that would govern case.

Tippett v. Daly, 10 A.3d 1123, 2010 D.C. App. LEXIS 737 (2010).

Amendment to provision of Tenant Opportunity to Purchase Act (TOPA) stating that a tenant living in a single-family rental home, upon receipt of written offer of sale from the owner, has 30 days to provide the owner with written statement of interest, by inserting the words "by hand or by sending by certified mail" after the phrase "provide the owner" did not constitute valid evidence of intent of predecessor council which enacted TOPA and later added the thirty-day deadline. *Tippett v. Daly*, 10 A.3d 1123, 2010 D.C. App. LEXIS 737 (2010).

On appeal from summary judgment in favor of landlord in tenant's action under the Tenant Opportunity to Purchase Act (TOPA), the Court of Appeals was not required to consider tenant's contention that December 1 was less than 60 days from October 3, for purposes of measuring the 60-day settlement period allowed to tenant under TOPA, where tenant failed to raise the contention before the trial court. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

Settlement period.

Given finding that residential rental property was a single-family dwelling, landlord complied with the Tenant Opportunity to Purchase Act (TOPA) when he allowed tenant a 60-day settlement period after tenant provided landlord with written statement of interest. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

§ 42-3404.10. Accommodations with 2 through 4 units.

The following provisions apply to accommodations with 2 through 4 units:

(1) *Joint and several response.* — The tenants may respond to an owner's offer first jointly, then severally. Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, or upon the Mayor's receipt of a copy of the written offer of sale, whichever is later, a group of tenants acting jointly shall have 15 days to provide the owner and the Mayor, by hand or by sending by certified mail, with a written statement of interest. Following that time period, if the tenants acting jointly have failed to submit a written statement of interest, an individual tenant shall have 7 days to provide a statement of interest to the owner and the Mayor, by hand or by sending by certified mail. Each statement of interest must be clear expression of interest on the part of the tenant or tenant group to exercise the right to purchase as specified in this subchapter;

(2) *Negotiation period.* —

(A) Upon receipt of a letter of intent from a tenant or a tenant group, the owner shall afford the tenants a reasonable period to negotiate a contract of sale, and shall not require less than 90 days. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day. If more than 1 individual tenant

submits a written statement of interest, the owner shall negotiate with each tenant separately, or jointly if the tenants agree to negotiate jointly;

(B) If, at the end of the 90-day period or any extensions thereof, the tenants jointly have not contracted with the owner, the owner shall provide an additional 30-day period, during which any 1 of the current tenants may contract with the owner for the purchase of the accommodation;

(C) If the owner is required to negotiate with more than one tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants.

(3) *Time before settlement.* — The owner shall afford the tenant a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 90 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(4) *Lapse of time.* — If 240 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the accommodation, the owner shall comply anew with the terms of this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 410, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(k), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(h), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(n), 42 DCR 3239; Oct. 21, 2008, D.C. Law 17-234, § 2(c), 55 DCR 9014; July 23, 2010, D.C. Law 18-193, § 2(b), 57 DCR 4510.)

Section references. — This section is referred to in §§ 42-3404.05, 42-3404.08, and 42-3404.12.

Prior Codifications. — 1981 Ed., § 45-1639.

Effect of amendments. — D.C. Law 17-234, in par. (1), rewrote the second sentence, which had read as follows: "Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, a group of tenants acting jointly shall have 15 days to provide the owner and the Mayor with a written statement of interest."

D.C. Law 18-193, in par. (1), substituted "and the Mayor, by hand or by sending by certified mail," for "and the Mayor".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(n) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

For temporary (225 day) amendment of section, see § 2(b) of Tenant Opportunity to Purchase Preservation Clarification Temporary Amendment Act of 2009 (D.C. Law 18-23, July 7, 2009, law notification 56 DCR 6125).

For temporary (225 day) amendment of section, see § 2(b) of Tenant Opportunity to Purchase Preservation Clarification Temporary Amendment Act of 2010 (D.C. Law 18-177, May 27, 2010, law notification 57 DCR 6039).

Emergency legislation. — For temporary amendment of section, see § 3(n) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(n) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(n) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

For temporary (90 day) amendment of section, see § 2(b) of Tenant Opportunity to Purchase Preservation Clarification Emergency Amendment Act of 2009 (D.C. Act 18-38, March 21, 2009, 56 DCR 2668).

For temporary (90 day) amendment of section, see § 2(b) of Tenant Opportunity to Purchase Preservation Clarification Congressional

Review Emergency Amendment Act of 2009 (D.C. Act 18-109, June 18, 2009, 56 DCR 4934).

For temporary (90 day) amendment of section, see § 2(b) of Tenant Opportunity to Purchase Preservation Clarification Emergency Amendment Act of 2010 (D.C. Act 18-327, March 18, 2010, 57 DCR 2544).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Legislative history of Law 17-234. — For Law 17-234, see notes following § 42-3404.03.

Legislative history of Law 18-193. — For Law 18-193, see notes following § 42-3404.09.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(n) of D.C. Law 10-144 purported to amend (1) and (2) of this section to read as follows:

"The following provisions apply to accommodations with 2 through 4 units:

"(1) Joint and several response. The tenants may respond to an owner's offer first jointly, then severally. Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, a group of tenants acting jointly shall have 15 days to provide the owner and the Mayor with a written statement of interest. Following that time period, if the tenants acting jointly have failed to submit a written statement of interest, an individual tenant shall have 7 days to provide a statement of interest to the owner and the Mayor. Each statement of interest must be clear expression of interest on the part of the tenant or tenant group to exercise the right to purchase as specified in this subchapter;

"(2) Negotiation period. (A) Upon receipt of a letter of intent from a tenant or a tenant group, the owner shall afford the tenants a reasonable period to negotiate a contract of sale, and shall not require less than 90 days. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day. If more than 1 individual tenant submits a written statement of interest, the owner shall negotiate with each tenant separately, or jointly if the tenants agree to negotiate jointly.

"(B) If, at the end of the 90-day period or any extensions thereof, the tenants jointly have not contracted with the owner, the owner shall provide an additional 30-day period, during which any 1 of the current tenants may contract with the owner for the purchase of the accommodation;

"(C) If the owner is required to negotiate with more than 1 tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants."

CASE NOTES

In general.

Tenant's claim that her offer to purchase four-unit rental accommodation was more favorable than prospective third-party purchaser's did not entitle her to purchase the property, where third-party had been assigned another tenant's rights under the Tenant Opportunity to Purchase Act; the determination as to which tenant's offer was more favorable was owner's to make. *Allman v. Snyder*, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

If both parties seeking to purchase a rental accommodation with two through four units are tenants, then the owner has the right, following the expiration of the statutory 90-day negotiation period, to choose whichever offer he prefers; the Tenant Opportunity to Purchase Act does not limit the factors that the owner may consider in making that choice. *Allman v. Snyder*,

888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

Tenant who offered to purchase two-to-four rental unit accommodation was not entitled to have his offer accepted by owner just because he offered a higher price than third party; Rental Housing Conversion and Sale Act provided that owner could decide which offer was more favorable, and higher offer was not necessarily a more favorable one. *Medrano v. Osterman*, 885 A.2d 310, 2005 D.C. App. LEXIS 534 (2005).

Owner of two-to-four rental unit accommodation was not free to accept offer to purchase from third party, who effectively became tenant under Rental Housing Conversion and Sale Act by assignment of rights from tenant, before negotiating for 90-day statutory period with other tenant interested in buying, even though

latter tenant's timely statement of interest was not submitted until after third party had made a contract offer. *Medrano v. Osterman*, 885 A.2d 310, 2005 D.C. App. LEXIS 534 (2005).

If more than one individual tenant of a two-to-four rental unit accommodation has submitted a timely written statement of interest in buying, the owner may not contract for sale to

one of those tenants without negotiating with the others for 90-day period provided in Rental Housing Conversion and Sale Act, but rather must negotiate in good faith for the full 90 days with each tenant who has expressed a timely written interest in buying. *Medrano v. Osterman*, 885 A.2d 310, 2005 D.C. App. LEXIS 534 (2005).

§ 42-3404.11. Accommodations with 5 or more units.

The following provisions apply to accommodations with 5 or more units:

(1) *Tenant organization.* — In order to make a contract of sale with an owner, the tenants shall: (A) form a tenant organization with the legal capacity to hold real property, elect officers, and adopt bylaws, unless such a tenant organization exists in a form desired by the tenants; (B) file articles of incorporation; and (C) deliver an application for registration to the Mayor and the owner by hand or by certified mail within 45 days of receipt of a valid offer or the Mayor's receipt of a copy of a valid offer, whichever is later. If, at the time of receipt of the valid offer, a tenant organization exists in a form desired by the tenants, the delivery of the application for registration to the Mayor and the owner by hand or by certified mail shall be within 30 days of receipt of a valid offer or the Mayor's receipt of a valid offer, whichever is later. The application shall include the name, address, and phone number of tenant officers and legal counsel (if any); a copy of the articles of incorporation, as filed; a copy of the bylaws; documentation that the organization represents at least a majority of the occupied rental units as of the time of registration and such other information as the Mayor may require. Upon registration, the organization constitutes the sole representative of the tenants, and the prior offer of sale is deemed an offer to the organization;

(2) *Negotiation period.* — The owner shall afford the tenant organization a reasonable period to negotiate a contract of sale, and shall not require less than 120 days from the date of receipt of the statement of registration. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day;

(3) *Time before settlement.* —

(A) The owner shall afford the tenant organization a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 120 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 240 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(B) If the tenant organization articles of incorporation provide, by the date of contracting, that the purpose of the tenant organization is to convert the accommodation to a nonprofit housing cooperative with appreciation of share value limited to a maximum of the annual rate of inflation, the owner shall require not less than 180 days after the date of contracting or such additional time as required by this section;

(4) *Lapse of time.* — If 360 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the accommodation, an owner shall comply anew with the terms of this subchapter. In such a case, the tenant organization shall also comply anew with respect to delivery of a registration statement; the original tenant articles of incorporation, officers and bylaws remain effective unless defective under their own terms or other provisions of law.

(Sept. 10, 1980, D.C. Law 3-86, § 411, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(e), 28 DCR 2824; Oct. 21, 2008, D.C. Law 17-234, § 2(d), 55 DCR 9014; July 23, 2010, D.C. Law 18-193, § 2(c), 57 DCR 4510.)

Section references. — This section is referred to in §§ 42-3404.02, 42-3404.02a, 42-3404.05, 42-3404.08, 42-3404.12, 42-3404.34, and 42-3405.07.

Prior Codifications. — 1981 Ed., § 45-1640.

Effect of amendments. — D.C. Law 17-234, in par. (1), inserted “or the Mayor’s receipt of a copy of a valid offer, whichever is later” in the first sentence, and inserted “or the Mayor’s receipt of a valid offer, whichever is later” in the second sentence.

D.C. Law 18-193, in par. (1), substituted “certified” for “first class”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Tenant Opportunity to Purchase Preservation Clarification Temporary Amendment Act of 2009 (D.C. Law 18-23, July 7, 2009, law notification 56 DCR 6125).

For temporary (225 day) amendment of section, see § 2(c) of Tenant Opportunity to Purchase Preservation Clarification Temporary

Amendment Act of 2010 (D.C. Law 18-177, May 27, 2010, law notification 57 DCR 6039).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Tenant Opportunity to Purchase Preservation Clarification Emergency Amendment Act of 2010 (D.C. Act 18-327, March 18, 2010, 57 DCR 2544).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 17-234. — For Law 17-234, see notes following § 42-3404.03.

Legislative history of Law 18-193. — For Law 18-193, see notes following § 42-3404.09.

Editor’s notes. — Reenactment of law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Construction and application.

Negotiation period.

Tenant organizations.

Construction and application.

Because individual tenant was not entitled under District of Columbia Rental Housing Act to purchase apartment building herself, as the right was given only to tenants’ association, tenant who alleged that she was not given opportunity required by law did not state claim for conspiracy to defraud by vendor and purchaser as she did not show any damages in the absence of evidence that tenants would have formed an organization, registered with the mayor as required by the Act, and engaged in negotiations to purchase the property, including securing financing. D.C. Code 1981, § 45-1640. *Redmond v. Birkel*, 933 F. Supp. 1, 1996 U.S. Dist. LEXIS 10089 (1996).

Tenants were not required to show they are financially capable of purchasing property or to form tenant organization before suing for landlord’s failure to provide notice of intent to sell rental property, as required under District of Columbia Rental Housing Conversion and Sale Act; Act only requires tenants to form organization after notice is given and financial capacity to purchase is irrelevant to requirement of notice. D.C. Code 1981, §§ 45-1631, 45-1632, 45-1640(1)(C). *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Tenant of apartment building containing more than five units which tenant organization had been formed to purchase was precluded by Rental Housing Conversion and Sale Act from suing owner in tenant’s own right to collect damages and obtain equitable and declaratory relief because of owner’s alleged violation of Act’s requirement that he bargain in good faith. D.C. Code 1981, § 45-1640. *Stanton v.*

Gerstenfeld, 582 A.2d 242, 1990 D.C. App. LEXIS 271 (1990).

Negotiation period.

Under provision requiring apartment building owners to give tenant organization reasonable period of not less than 120 days to negotiate a contract of sale, owners effectively extended statutorily required reasonable negotiation period when they failed to respond to tenant organization's contract proposal until after end of 120-day period. D.C. Code 1981, § 45-1640(2). *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

Apartment building owners' failure to comply with request for detailed statement of operating expenses did not toll running of negotiation period where tenant association did not make request until after it had submitted two contract proposals for purchase of building more than 120 days after beginning of negotiation period. D.C. Code 1981, §§ 45-1632(4), 45-1637, 45-1640(2). *Lealand Tenants Ass'n v. Johnson*, 572 A.2d 431, 1990 D.C. App. LEXIS 72 (1990).

The limited negotiation period protects the rights of property owners from tenants who could easily bind owners for an indefinite period of time. *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988).

Negotiation period was not extended by plaintiff's request for operating expense state-

ment when the request was not made until after the expiration of the negotiating period provided by this section. *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988).

Tenant organizations.

Tenant's association, and not individual tenants, had standing to bring suit alleging violation of tenants' rights under Rental Housing Conversion and Sale Act, which protected tenants during sale of apartments. D.C. Code 1981, §§ 45-1638, 45-1640, 45-1640(1). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

Rental Housing Conversion and Sale Act envisioned that tenant organization could establish reasonable rules governing its memberships, and thus, tenant organization had power to terminate membership of member of association. D.C. Code 1981, §§ 45-1601 to 45-1663. *Raskauskas v. Temple Realty Co.*, 589 A.2d 17, 1991 D.C. App. LEXIS 73 (1991).

Under Rental Housing Conversion and Sale Act, statutory method afforded tenants to purchase accommodations of five or more units gives individual tenant no opportunity to negotiate with owner or to purchase in tenant's own right; tenant organization is sole entity that can conduct with owner negotiations required by Act. D.C. Code 1981, §§ 45-1634, 45-1638, 45-1639. *Stanton v. Gerstenfeld*, 582 A.2d 242, 1990 D.C. App. LEXIS 271 (1990).

§ 42-3404.12. Exceptions to coverage of subchapter; expiration provisions.

Sections 42-3404.02, 42-3404.04, 42-3404.05, 42-3404.06, 42-3404.07, 42-3404.09(3) and (4), 42-3404.10(3) and (4) and 42-3404.11(3) and (4) apply to any sale of a housing accommodation for which a contract is not fully ratified prior to June 3, 1980, and the period for contracting pursuant to § 601 or § 602 of the Rental Housing Act is not expired prior to the effective date of this subchapter. This subchapter applies in its entirety to any sale of a housing accommodation for which a notice pursuant to § 601 or § 602 of the Rental Housing Act is not received by the tenants in at least 50% of the occupied rental units in the housing accommodation prior to June 3, 1980. This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 42-3405.12. This subchapter does not apply to accommodations for which a vacancy exemption is approved, as provided in § 42-3402.10.

(Sept. 10, 1980, D.C. Law 3-86, § 412, 27 DCR 2975; Sept. 26, 1980, D.C. Law 3-106, § 3(b), 27 DCR 3758; Mar. 4, 1981, D.C. Law 3-131, § 801(e), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(l), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(i), 35 DCR 5715; Sept. 6, 1995, D.C. Law 11-31, § 3(o), 42 DCR 3239.)

Prior Codifications. — 1981 Ed., § 45-1641.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988 (D.C. Law 7-140, September 21, 2008, law notification 35 DCR 7279).

For temporary (225 day) amendment of section, see § 2(d) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1993 (D.C. Law 10-13, September 11, 1993, law notification 40 DCR 6835).

For temporary (225 day) amendment of section, see § 2(d) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6706).

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(o) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(o) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(596) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 3-106. — For legislative history of D.C. Law 3-106, see Historical and Statutory Notes following § 42-3404.05.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-3401.03.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 7-154. — For legislative history of D.C. Law 7-154, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

References in text. — The “Rental Housing Act”, referred to in the second sentence, is the Rental Housing Act of 1977, D.C. Law 2-54, which had formerly been codified as Chapter 16 of this title, and which was subsequently superseded by the Rental Housing Act of 1980, D.C. Law 3-131. See also § 42-3401.03(15).

Editor’s notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(o) of D.C. Law 10-144 purported to amend this section to read as follows: “Sections 45-1631, 45-1633, 45-1634, 45-1635, 45-1636, 45-1638 (3) and (4), 45-1639 (3) and (4) and 45-1640 (3) and (4) apply to any sale of a housing accommodation for which a contract is not fully ratified prior to June 3, 1980, and the period for contracting pursuant to § 601 or § 602 of the Rental Housing Act is not expired prior to the effective date of this subchapter. This subchapter applies in its entirety to any sale of a housing accommodation for which a notice pursuant to § 601 or § 602 of the Rental Housing Act is not received by the tenants in at least 50% of the occupied rental units in the housing accommodation prior to June 3, 1980. This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662 [§ 42-3405.12, 2001 Ed.]. This subchapter does not apply to accommodations for which a vacancy exemption is approved, as provided in § 45-1639 [§ 42-3404.10, 2001 Ed.].”

§ 42-3404.13. Notice to convert; offer to sell.

(a) Every tenant of a housing accommodation which the declarant seeks to convert from a rental basis to a cooperative shall be notified in writing of the declarant’s intent to convert the housing accommodation to a cooperative not less than 120 days before the conversion thereof. The declarant shall also make to each tenant of the housing accommodation a bona fide offer to sell such tenant such shares or membership interest in the cooperative as will enable the tenant to continue to reside in his or her unit after conversion. The offer

shall include, but not be limited to, the asking price for the shares or membership interest and a statement of the tenant's rights to provide such shares or membership interest under the provisions of this section. The tenant shall be afforded not less than 60 days in which to contract with the landlord for the purchase of the shares or membership interest at a mutually agreeable price and under mutually agreeable terms, which shall be at least as favorable as those offered to the general public.

(b) Repealed.

(Sept. 10, 1980, D.C. Law 3-86, § 413(b), as added Aug. 1, 1981, D.C. Law 4-27, § 2(f), 28 DCR 2824; Nov. 5, 1983, D.C. Law 5-38, § 3, 30 DCR 4866.)

Prior Codifications. — 1981 Ed., § 45-1642.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 5-38. — For legislative history of D.C. Law 5-38, see Historical and Statutory Notes following § 42-3405.03a.

Subchapter IV-A. District's Opportunity to Purchase.

§ 42-3404.31. District's opportunity to purchase certain housing accommodations.

(a) Before an owner of a housing accommodation may sell a housing accommodation comprised of 5 or more units, the owner shall provide to the Mayor, on behalf of the District, and the Mayor shall have, an opportunity to purchase the housing accommodation in the same manner, except as otherwise provided by this subchapter, as the opportunity to purchase is provided to a tenant under subchapter IV of this chapter.

(b) The Mayor may assign the opportunity to purchase pursuant to § 42-3404.36.

(c) The Mayor shall have the same remedies and rights to enforce owner compliance with this chapter as a tenant or tenant organization would have against an owner for violation of this chapter.

(Sept. 10, 1980, D.C. Law 3-86, § 431, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — Law 17-286, the "District's Opportunity to Purchase Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-631 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 1, 2008, and October 7, 2008, respectively. Signed by the Mayor on October 27, 2008, it was assigned Act No.

17-552 and transmitted to both Houses of Congress for its review. D.C. Law 17-286 became effective on December 24, 2008.

Delegation of Authority. — Delegation of Rulemaking Authority under the District's Opportunity to Purchase Amendment Act of 2008, see Mayor's Order 2010-157, October 8, 2010 (57 DCR 9556).

§ 42-3404.32. Limitations on the District's opportunity to purchase.

(a) The District's opportunity to purchase shall be subordinate to the right of a tenant.

(b) To exercise its right under this subchapter, the Mayor shall provide a written statement of interest to the owner and tenant within 30 days of the Mayor's receipt of the copy of offer of sale required by § 42-3404.03.

(c)(1) The Mayor shall not exercise the opportunity to purchase provided by this subchapter unless at least 25% of the rental units in the housing accommodation are affordable units.

(2) For the purposes of this subsection, the term "affordable unit" means a rental unit in a housing accommodation for which the existing monthly rent, including utilities, paid by the tenant is equal to or less than 30% of the monthly income of a household with an income of 50% of the area median income, as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for the household size.

(Sept. 10, 1980, D.C. Law 3-86, § 432, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

§ 42-3404.33. Limitations on the District as purchaser of a housing accommodation.

(a) If the District, or an assignee, purchases a housing accommodation pursuant to this subchapter, the District shall remain subject to all provisions of this chapter as owner of the housing accommodation.

(b)(1) The Mayor, or an assignee of the Mayor, shall maintain affordable rents in the housing accommodation so that unit rents for tenants living in the housing accommodation on the date that the offer of sale was issued will not be greater than the unit rent on the date of the offer of sale or 30% of an existing tenant's household income, whichever is less.

(2) For the purposes of this subsection, household income shall be calculated pursuant to 24 C.F.R. § 5.609.

(3) Tenants shall be notified in writing as to the manner in which the Mayor, or an assignee of the Mayor, calculates household income and rent.

(4) The Rent Administrator shall consider a challenge to a rent amount or income calculation upon a petition filed by a tenant. The petition shall be heard and determined according to the procedures in the Rent Stabilization Program established pursuant to subchapter II of Chapter 35 of this title [§ 42-3502.01 et seq.].

(5) Notwithstanding the rent amounts established pursuant to this section, nor any other law, no tenant in an affordable unit shall be required to pay a rent increase of more than 10% per year.

(6) Income restrictions may be imposed upon the housing accommodation

by the Mayor, or an assignee of the Mayor; provided, that an existing tenant shall be exempt from any income restrictions.

(c)(1) The Mayor, or an assignee of the Mayor, shall maintain any unit in the housing accommodation that was an affordable unit, as defined in § 42-3404.32(c)(2), on the date that the offer of sale was issued as affordable for as long as the housing accommodation remains a housing accommodation owned by the District.

(2) For any rental unit that becomes vacant:

(A) If the monthly rent, including utilities, paid by the tenant was equal to or less than 30% of the monthly income of a household with an income of 60% of the area median income, as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for the household size, that unit shall remain affordable for a tenant with an income at or below 60% of the area median income; or

(B) If the monthly rent, including utilities, paid by the tenant was equal to or less than 30% of the monthly income of a household with an income of 30% of the area median income, as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for the household size, that unit shall remain affordable for a tenant with an income at or below 30% of the area median income.

(3) Vacancies in affordable units shall be filled and maintained so that the division of affordable units in the housing accommodation is no less than one-third affordable for households at 30% of area median income, one-third affordable for households at 60% of area median income, and one-third affordable for households at 80% of area median income.

(d) If any unit in the housing accommodation was not an affordable unit as defined in § 42-3404.32(c)(2), on the date the offer of sale was issued, the Mayor, or an assignee of the Mayor, shall develop an affordability plan to explore all means whereby the number of affordable units in the housing accommodation may be increased. The Mayor, or an assignee of the Mayor, shall take all practicable steps to increase the number of affordable units in the housing accommodation.

(Sept. 10, 1980, D.C. Law 3-86, § 433, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

§ 42-3404.34. Procedure for District to effectuate purchase.

(a) The Mayor shall have not less than 150 days from the date of the owner's receipt of the Mayor's written statement of interest, issued pursuant to § 42-3404.32(b), to negotiate a contract for sale.

(b) For every day of delay in providing information by the owner as required by this chapter, the negotiation period shall be extended by one day.

(c) If a tenant organization is formed and delivers an application for registration to the Mayor pursuant to § 42-3404.11, the Mayor shall have 15

days, in addition to the time provided for in subsection (a) of this section, to negotiate a contract of sale.

(d) The Mayor shall have up to 60 days after the date of execution of a contract of sale to complete settlement.

(e) If the owner provides any extension of time to a tenant under this chapter, the Mayor shall automatically receive the same extension of time. The owner shall provide written notification to the Mayor of any extensions of time provided to the tenant.

(Sept. 10, 1980, D.C. Law 3-86, § 434, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

§ 42-3404.35. Rights of tenants not abrogated.

No provision of this subchapter shall abrogate the rights of tenants or tenant organizations under this chapter.

(Sept. 10, 1980, D.C. Law 3-86, § 435, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

§ 42-3404.36. Assignment of District rights.

The Mayor may assign the opportunity to purchase provided under this subchapter to a person that:

(1) Demonstrates the capacity to own and manage, either by itself or through a management agent, the housing accommodation and related facilities for the remaining useful life of the housing accommodation; and

(2) Agrees to obligate itself and any successors in interest to maintain the affordability of the assisted housing development as required by § 42-3404.33.

(Sept. 10, 1980, D.C. Law 3-86, § 436, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

§ 42-3404.37. Rules.

Within 60 days of December 24, 2008, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter.

(Sept. 10, 1980, D.C. Law 3-86, § 437, as added Dec. 24, 2008, D.C. Law 17-286, § 2, 55 DCR 11989.)

Legislative history of Law 17-286. — For Law 17-286, see notes following § 42-3404.31.

Subchapter V. Implementation and Enforcement.

§ 42-3405.01. Rule making; publication requirements.

(a) The Mayor shall issue rules for the implementation of this chapter. The Mayor shall issue rules for the holding of elections which shall include, but not be limited to, provisions for secret voting, and the right of any person including the owner to observe the counting of the ballots.

(b) By November 9, 1980, the Mayor shall publish in the D.C. Register a summary of tenant rights and obligations pursuant to this chapter, and sources of technical assistance, which shall include, but shall not be limited to, information regarding counseling, subsidy programs, relocation services, housing purchase and rehabilitation finance, tax relief programs, formation of tenant organizations, purchase of housing accommodations, rehabilitation, and conversion to cooperative or condominium.

(c) By March 5, 1996, the Mayor shall issue updated rules for comment, which shall reflect all changes made by the Rental Housing Conversion and Sale Act of 1980 Reenactment Extension and Amendment Act of 1995. Within 180 days after publication of the proposed rules, the Mayor shall adopt final rules. The failure to meet these deadlines shall not prevent the changes in the Rental Housing Conversion and Sale Act of 1980 Reenactment Extension and Amendment Act of 1995 from being effective immediately upon September 6, 1995.

(Sept. 10, 1980, D.C. Law 3-86, § 501, 27 DCR 2975; Sept. 6, 1995, D.C. Law 11-31, § 3(p), 42 DCR 3239; Apr. 9, 1997, D.C. Law 11-255, § 47, 44 DCR.)

Prior Codifications. — 1981 Ed., § 45-1651.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(p) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 10-144. — For

legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

References in text. — The Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995, referred to in this section, is D.C. Law 11-31.

Delegation of Authority. — Delegation of authority under Rental Housing Conversion and Sale Act of 1983, as amended, see Mayor's Order 84-8, January 12, 1984.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(p) of D.C. Law 10-144 purported to amend this section by adding (c) to read as follows:

“(c) Within 180 days after July 23, 1994, the Mayor shall issue updated rules for comment, which shall reflect all changes made by the Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994. Within 180 days after publication of the pro-

posed rules, the Mayor shall adopt final rules. The failure to meet these deadlines shall not prevent the changes in the Rental Housing

Conversion and Sale Act of 1980 Extension and Amendment Act of 1994 from being effective immediately upon July 23,

§ 42-3405.02. Time periods.

If a time period running under this chapter ends on a Saturday, Sunday, or legal holiday, it is extended until the next day which is not a Saturday, Sunday, or legal holiday.

(Sept. 10, 1980, D.C. Law 3-86, § 502, 27 DCR 2975.)

Prior Codifications. — 1981 Ed., § 45-1652.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3405.03. Civil cause of action.

An aggrieved owner, tenant, or tenant organization may seek enforcement of any right or provision under this chapter through a civil action in law or equity, and, upon prevailing, may seek an award of costs and reasonable attorney fees. In an equitable action, the public policy of this chapter favors the waiver of bond requirements to the extent permissible under law or court rule.

(Sept. 10, 1980, D.C. Law 3-86, § 503, 27 DCR 2975.)

Section references. — This section is referred to in §§ 42-3404.02, 42-3404.02a, 42-3405.03a, 42-3405.03b, and 42-3405.06.

Prior Codifications. — 1981 Ed., § 45-1653.

Legislative history of Law 3-86. — For

legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

ANALYSIS

Attorney fees.

In general.

Specific performance.

Standing.

Attorney fees.

Trial court's order requiring that tenant pay landlord's attorney fees, in tenant's Tenant Opportunity to Purchase Act (TOPA) action against landlord, was not a final, appealable order, where trial court had not determined the amount of attorney fees to be paid. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

Former apartment building owner and wholly owned company to which he transferred building were not aggrieved parties in tenant association's action under the Tenant Opportunity to Purchase Act, and thus, they were not

entitled to attorney fees under the Act, where they were not seeking to enforce their rights, but rather were defending against an action brought by the association. *Wallasey Tenants Ass'n v. Varner*, 892 A.2d 1135, 2006 D.C. App. LEXIS 79 (2006).

In general.

District of Columbia Rental Housing Conversion and Sale Act does not authorize tenants to recover damages for landlord's failure to give notice of intent to sell; tenants may seek only enforcement of Act, costs, and reasonable attorney fees. D.C. Code 1981, § 45-1653. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Transfer of apartment building by corporation to its subsidiary, followed by transfer of 99% of the stock of the subsidiary to new shareholder, was not an unfair trade practice under the Consumer Protection Procedures Act

(CPPA), though it may have triggered tenants' right to purchase the building under the Rental Housing Conversion and Sale Act; the CPPA did not mention the Sales Act though the CPPA explicitly stated that violations of other statutes constituted a violation of the CPPA. Sales Act contained its own detailed provisions for implementation and enforcement, and the CPPA expressly forbade the Department of Consumer and Regulatory Affairs (DCRA) from applying the administrative remedies of the CPPA to landlord-tenant relations. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Under Rental Housing Conversion and Sale Act, owner of housing accommodation of five or more units only owes duties to tenant organization properly organized under Act; accordingly, if civil cause of action arises against owner under statute, it is only tenant organization that is "aggrieved" under statutory provision, and, therefore, it is only tenant organization that can bring civil action against owner under statute, and individual dissenting tenant has no right to assert claim against owner for violation of Act. D.C. Code 1981, §§ 45-1653, 45-1653.1. *Stanton v. Gerstenfeld*, 582 A.2d 242, 1990 D.C. App. LEXIS 271 (1990).

Specific performance.

Tenants' Opportunity to Purchase Act (TOPA) authorized award of attorney fees to

tenants' association as prevailing party in action for specific performance of real estate agreement. *Malik Corp. v. Tenacity Group, LLC*, 961 A.2d 1057, 2008 D.C. App. LEXIS 481 (2008).

Once tenants' association accepted vendor's offer to purchase property, association had statutory right under Tenants Opportunity to Purchase Act (TOPA) to seek enforcement of agreement via action for specific performance after vendor revoked offer. *Malik Corp. v. Tenacity Group, LLC*, 961 A.2d 1057, 2008 D.C. App. LEXIS 481 (2008).

Standing.

Tenants' association lacked standing as a "tenant organization" to bring action against apartment building owners under the Rental Housing Conversion and Sale Act, as association had not obtained signed membership forms from a majority of the eligible tenants and had not registered with the Mayor. *Twin Towers Plaza Tenants Ass'n v. Capitol Park Assocs., L.P.*, 894 A.2d 1113, 2006 D.C. App. LEXIS 143 (2006).

Tenant's association, and not individual tenants, had standing to bring suit alleging violation of tenants' rights under Rental Housing Conversion and Sale Act, which protected tenants during sale of apartments. D.C. Code 1981, §§ 45-1638, 45-1640, 45-1640(1). *West End Tenants Ass'n v. George Washington Univ.*, 640 A.2d 718, 1994 D.C. App. LEXIS 61 (1994).

§ 42-3405.03a. Declaratory relief.

(a) An aggrieved owner, tenant, or tenant organization may petition the Mayor for declaratory relief under provisions of this chapter. Upon a showing of reasonable grounds, the Mayor shall grant a hearing and may issue findings of fact, conclusions of law, and declaratory orders and take other enforcement actions provided by this subchapter.

(b) The Mayor shall consider a petition for relief and issue a declaratory order with regard to the petition within 30 days after receipt of the petition requesting relief. The Mayor shall promulgate regulations to afford all interested parties an opportunity to participate in any declaratory proceeding.

(c) A declaratory order issued pursuant to § 42-3405.03 or § 42-3405.03a shall be the sole means by which the Mayor shall issue an official, binding determination pursuant to the request of an aggrieved owner, tenant, or tenant organization to determine rights under subchapters IV and V of this chapter. Reliance upon any other form of determination shall not be afforded any weight.

(d) Notwithstanding the preceding subsection, the following, when taken together, shall constitute conclusive proof of the termination of a tenant's or a tenant organization's rights pursuant to subchapters IV and V of this chapter:

(1) Certifications provided by the Mayor setting forth the date of receipt of the Notice of Transfer and indicating that no Time Certain Notices from a tenant or tenant organization were received within the prescribed periods;

(2) An affidavit from the owner or the owner's authorized representative attesting to the date, content, and manner of issuance of the Notice of Transfer; and

(3) An affidavit from owner or owner's authorized representative in compliance with the Servicemembers Civil Relief Act, approved October 17, 1940 (54 Stat. 1178; 50 U.S.C. App. § 501 et seq.), as to any tenant whose rights are affected by this chapter.

(Sept. 10, 1980, D.C. Law 3-86, § 503a, as added Nov. 5, 1983, D.C. Law 5-38, § 2(m), 30 DCR 4866; July 22, 2005, D.C. Law 16-15, § 2(d), 52 DCR 6885.)

Prior Codifications. — 1981 Ed., § 45-1653.1.

Effect of amendments. — D.C. Law 16-15 designated the existing text as subsec. (a), and added subsecs. (b) to (d).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 5-38. — Law 5-38, the "Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983," was introduced in Council and assigned

Bill No. 5-162 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 15, 1983, it was assigned Act No. 5-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-15. — For Law 16-15, see notes following § s 42-3401.03.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

In general.

Transfer of apartment building by corporation to its subsidiary, followed by transfer of 99% of the stock of the subsidiary to new shareholder, was not an unfair trade practice under the Consumer Protection Procedures Act (CPPA), though it may have triggered tenants' right to purchase the building under the Rental Housing Conversion and Sale Act; the CPPA did not mention the Sales Act though the CPPA explicitly stated that violations of other statutes constituted a violation of the CPPA, Sales Act contained its own detailed provisions for implementation and enforcement, and the CPPA expressly forbade the Department of Consumer and Regulatory Affairs (DCRA) from applying the administrative remedies of the

CPPA to landlord-tenant relations. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Under Rental Housing Conversion and Sale Act, owner of housing accommodation of five or more units only owes duties to tenant organization properly organized under Act; accordingly, if civil cause of action arises against owner under statute, it is only tenant organization that is "aggrieved" under statutory provision, and, therefore, it is only tenant organization that can bring civil action against owner under statute, and individual dissenting tenant has no right to assert claim against owner for violation of Act. D.C. Code 1981, §§ 45-1653, 45-1653.1. *Stanton v. Gerstenfeld*, 582 A.2d 242, 1990 D.C. App. LEXIS 271 (1990).

§ 42-3405.03b. Choice of forum; standard of review.

(a) The rights provided under §§ 42-3405.03 and 42-3405.03a are in the alternative. The party bringing the action may choose the forum and need not exhaust administrative remedies in order to bring an action under § 42-3405.03. Unless all parties to the action agree otherwise, once an action has been brought in one forum, an action based on the same or a substantially similar cause of action may not be brought in any other forum.

(b) The applicability of this chapter, and rights created hereunder, shall be determined by examining the substance of the transaction or series of transactions. A step transaction or other device entered into or employed for

the purpose of avoiding the obligation to comply with the requirements of this chapter shall be construed in accordance with the substance of the transaction.

(Sept. 10, 1980, D.C. Law 3-86, § 503b, as added Sept. 6, 1995, D.C. Law 11-31, § 3(q), 42 DCR 3239; July 22, 2005, D.C. Law 16-15, § 2(e), 52 DCR 6885.)

Prior Codifications. — 1981 Ed., § 45-1653.2.

Effect of amendments. — D.C. Law 16-15, in the section heading, inserted “; standard of review”; designated the existing text as subsec. (a); and added subsec. (b).

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(p) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary addition of section, see § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary addition of section, see § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 10-144. — Law 10-144, the “Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-243, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May

18, 1994, it was assigned Act No. 10-251 and transmitted to both Houses of Congress for its review. D.C. Law 10-144 became effective on July 23, 1994.

Legislative history of Law 11-31. — Law 11-31, the “Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-53, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 16, 1995, it was assigned Act No. 11-63 and transmitted to both Houses of Congress for its review. D.C. Law 11-31 became effective on September 6, 1995.

Legislative history of Law 16-15. — For Law 16-15, see notes following § 42-3401.03.

Editor’s notes. — Reenactment of D.C. Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Addition of § 45-1653.2 by Law 10-144: Section 2(q) of D.C. Law 10-144 purported to add a § 503b to D.C. Law 3-86 to be codified as § 42-3405.03b which read:

“The rights provided under §§ 45-1653 and 45-1653.1 are in the alternative. The party bringing the action may choose the forum and need not exhaust administrative remedies in order to bring an action under § 45-1653. Unless all parties to the action agree otherwise, once an action has been brought in 1 forum, an action based on the same or a substantially similar cause of action may not be brought in any other forum.”

§ 42-3405.04. Notice of rejection.

If the Mayor determines to reject an application by a party pursuant to this chapter, he or she shall notify the applicant of the findings upon which the rejection is based, and that the rejection will be deemed final in 20 days. During the 20-day period, the applicant may petition for reconsideration, and, upon a proper showing of reasonable grounds, shall be entitled to a hearing to contest the particulars specified in the Mayor’s rejection notice. Such notice of rejection shall not take effect during the pendency of a hearing, if requested.

(Sept. 10, 1980, D.C. Law 3-86, § 504, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(g), 28 DCR 2824.)

Section references. — This section is referred to in § 42-3405.08.

Prior Codifications. — 1981 Ed., § 45-1654.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Histor-

ical and Statutory Notes following § 42-3402.03.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

Jurisdiction.

Unsuccessful applicant for registration as tenant organization under Rental Housing Conversion and Sale Act of 1980 was not entitled to seek trial type hearing in superior court as an original action on petition for reconsideration of Condominium and Cooperative Conversion and Sales Branch's (CCCSB) rejection of

its application; the District Court of Appeals could have reviewed decision on direct appeal since denial was based on a matter of statutory interpretation, and if a trial type hearing was required, District Court of Appeals could have provided appropriate relief. 2348 Ainger Place Tenants Ass'n v. District of Columbia, 982 A.2d 305, 2009 D.C. App. LEXIS 507 (2009).

§ 42-3405.05. Investigations.

(a) The Mayor may make necessary public or private investigations in accordance with law within or without of the District of Columbia to determine compliance with the requirements of this chapter or to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge or relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

(Sept. 10, 1980, D.C. Law 3-86, § 505, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1655.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For

legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3405.06. Enforcement.

(a) The Mayor shall have the power to enforce this chapter and rules and regulations made hereunder. If the Mayor determines after notice and hearing

that a person has: (1) violated any provision of this chapter; (2) violated any condition imposed in writing in connection with the granting of any application or other request under this chapter; or (3) violated any lawful order or rule of the agency; the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his or her judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order which shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation, or order hereunder, the Mayor with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(d) The Mayor may intervene in any civil action involving the enforcement of any right or provision under this chapter. The Mayor may require an owner, tenant, or tenant organization to notify the Mayor of any suit instituted pursuant to § 42-3405.03.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 10, 1980, D.C. Law 3-86, § 506, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824; Oct. 5, 1985, D.C. Law 6-42, § 410(a), 32 DCR 4450.)

Section references. — This section is referred to in § 42-3405.08.

Prior Codifications. — 1981 Ed., § 45-1656.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 6-42. — Law

6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

CASE NOTES

In general.

District of Columbia Rental Housing Conversion and Sale Act does not authorize tenants to recover damages for landlord's failure to give notice of intent to sell; tenants may seek only enforcement of Act, costs, and reasonable attorney fees. D.C. Code 1981, § 45-1653. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

Transfer of apartment building by corporation to its subsidiary, followed by transfer of 99% of the stock of the subsidiary to new shareholder, was not an unfair trade practice under the Consumer Protection Procedures Act

(CPPA), though it may have triggered tenants' right to purchase the building under the Rental Housing Conversion and Sale Act; the CPPA did not mention the Sales Act though the CPPA explicitly stated that violations of other statutes constituted a violation of the CPPA, Sales Act contained its own detailed provisions for implementation and enforcement, and the CPPA expressly forbade the Department of Consumer and Regulatory Affairs (DCRA) from applying the administrative remedies of the CPPA to landlord-tenant relations. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

§ 42-3405.07. Revocation.

(a) A certificate issued pursuant to § 42-3402.02(a), an exemption issued pursuant to § 42-3402.02(b) or § 42-3402.10, or registration required pursuant to § 42-3404.11 may be revoked after notice and hearing upon a written finding of fact that the holder of the certificate, the holder of the exemption, or the registrant has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any certificate, exemption, or registration; or
- (3) Made intentional misrepresentations or concealed material facts in an application for a certificate, exemption, or registration.

(b) If the Mayor finds after notice and hearing that the holder of a certificate, the holder of an exemption, or the registrant has been guilty of a violation for which revocation could be ordered, the Mayor may issue a cease and desist order; or, upon adjudication for any infraction thereof, impose civil fines, penalties, and fees as alternative sanctions, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Sept. 10, 1980, D.C. Law 3-86, § 507, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824; Oct. 5, 1985, D.C. Law 6-42, § 410(b), 32 DCR 4450.)

Section references. — This section is referred to in § 42-3405.08.

Prior Codifications. — 1981 Ed., § 45-1657.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical

and Statutory Notes following § 42-3402.03.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 42-3405.06.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3405.08. **Administrative proceedings.**

(a) Any proceeding provided in § 42-3405.04, § 42-3405.06, or § 42-3405.07 shall be conducted according to §§ 2-509 and 2-510 and any officer designated to conduct such a proceeding shall not immediately supervise or be subject to supervision by any employee who participates or has participated in the investigation or prosecution of such case.

(b) After any hearing pursuant to this section, and within 10 days after the parties have been notified of the initial decision of the officer who conducted the hearing, if no appeal is taken or no determination is made to review the decision, the Mayor shall adopt and render the initial decision as the final decision and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of § 42-3405.04, § 42-3405.06, or § 42-3405.07, as appropriate.

(c) In the course of, or in connection with any such proceeding, the Mayor or any officer designated by rule may administer oaths or affirmations, take or cause depositions to be taken, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(d) Upon failure to obey a subpoena or to answer questions propounded by the presiding officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

(e) Any service required or authorized to be made under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Mayor may by regulation or otherwise require.

(Sept. 10, 1980, D.C. Law 3-86, § 508, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1658.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For

legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

§ 42-3405.09. **Judicial review.**

(a) After the issuance of a final decision and order pursuant to this chapter, and within 15 days after the Mayor has notified the parties of the final decision and order, any party to such proceeding may seek judicial review of such decision and order by filing a petition for review in the District of Columbia Court of Appeals.

(b) Proceedings for judicial review of Mayoral actions shall be subject to and be in accordance with § 2-510.

(Sept. 10, 1980, D.C. Law 3-86, § 509, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1659.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

CASE NOTES

Jurisdiction.

Unsuccessful applicant for registration as tenant organization under Rental Housing Conversion and Sale Act of 1980 was not entitled to seek trial type hearing in superior court as an original action on petition for reconsideration of Condominium and Cooperative Conversion and Sales Branch's (CCCSB) rejection of its application; the District Court of Appeals could have reviewed decision on direct appeal since denial was based on a matter of statutory interpretation, and if a trial type hearing was required, District Court of Appeals could have provided appropriate relief. 2348 Ainger Place Tenants Ass'n v. District of Columbia, 982 A.2d 305, 2009 D.C. App. LEXIS 507 (2009).

District Court of Appeals had exclusive juris-

diction to consider challenge to Condominium and Cooperative Conversion and Sales Branch's (CCCSB) decision rejecting one application for registration as tenant organization under rental Housing Conversion and Sale Act and accepting another, although letter from CCCSB directly stated that unsuccessful applicant could challenge determination in superior court or petition for declaratory relief; jurisdiction could not be conferred upon superior court by an agency's mistake, judicial review of agency's decision was at the heart of the action, and only the District Court of Appeals had jurisdiction to review challenges to CCCSB actions made pursuant to Act. 2348 Ainger Place Tenants Ass'n v. District of Columbia, 982 A.2d 305, 2009 D.C. App. LEXIS 507 (2009).

§ 42-3405.10. Penalties.

Any person who wilfully violates any provision of this chapter or any rule adopted under or order issued pursuant to this chapter or any person who wilfully in an application makes any false statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is larger, but not more than \$50,000; or such person may be imprisoned for no more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Office of the Corporation Counsel.

(Sept. 10, 1980, D.C. Law 3-86, § 510, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1660.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

CASE NOTES

In general.

District of Columbia Rental Housing Conversion and Sale Act does not authorize tenants to recover damages for landlord's failure to give notice of intent to sell; tenants may seek only

enforcement of Act, costs, and reasonable attorney fees. D.C. Code 1981, § 45-1653. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

§ 42-3405.10a. Rental Housing Conversion and Sale Act Task Force.

(a) The Mayor shall establish a Rental Housing Conversion and Sale Act Task Force ("Task Force") within 30 days after July 22, 2005.

(b) The general mandate of the Task Force shall be to examine all aspects of subchapters IV and V of this chapter, including its implementation and compliance with its requirements, and to determine the best means for preserving rental housing, preventing the deterioration of the housing stock, and preventing the displacement of tenants.

(c) The Mayor shall establish the methodology for achieving the purposes of the Task Force in consultation with the members. The Task Force shall issue a report and recommendations proposing policy initiatives and revisions to the statute designed to improve subchapters IV and V of this chapter, which shall be distributed to all members of the Council and the Mayor and made available to the general public within 30 days after its issuance.

(d) As part of its review, the Task Force shall consider:

(1) Whether the District is doing enough to help tenants avail themselves of the opportunity to purchase when an offer is presented, within the prescribed time periods;

(2) Whether the time periods for tenants to avail themselves of the offer of sale are too long or not long enough;

(3) Simplifying the procedures for Time Certain Notices by establishing a single notice procedure for all transactions that do not require a notice to tenants, shortening time periods for sending or filing notices, and eliminating the Notice of Intent to File Petition;

(4) Allowing any tenant in a multi-unit housing accommodation to file a petition for a declaratory order without forming a tenant organization or extending the time period for a tenant organization to form and register;

(5) Limiting this chapter to multi-unit housing accommodations;

(6) Whether the third party rights afforded tenants are being employed to further the purposes of this chapter; and

(7) Whether owners are evading the requirements of this chapter.

(e) The Task Force shall be composed of 7 members, 5 of whom shall be appointed by the Mayor and 2 of whom shall be appointed by the Chairman of the Council. Members of the Task Force shall represent the interests affected by this chapter, including tenants, owners, the District government, title insurers, and other industry representatives.

(f) The Task Force shall continue in existence for 6 months and shall issue its report and recommendations before disbanding.

(Sept. 10, 1980, D.C. Law 3-86, § 510a, as added July 22, 2005, D.C. Law

16-15, § 2(f), 52 DCR 6885; Apr. 7, 2006, D.C. Law 16-91, § 111, 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 101(c), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-91, in subsecs. (e) and (f), validated previously made technical corrections.

D.C. Law 16-191, in subsecs. (e) and (f), validated previously made technical corrections.

Legislative history of Law 16-15. — For Law 16-15, see notes following § s 42-3401.03.

Legislative history of Law 16-91. — Law 16-91, the “Technical Amendments Act of 2005”, was introduced in Council and assigned Bill

No. 16-477 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 1, 2005, and November 15, 2005, respectively. Signed by the Mayor on November 30, 2005, it was assigned Act No. 16-212 and transmitted to both Houses of Congress for its review. D.C. Law 16-91 became effective on April 7, 2006.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 42-1102.

§ 42-3405.11. Statutory construction.

The purposes of this chapter favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law. If this chapter conflicts with another provision of law of general applicability, the provisions of this chapter control.

(Sept. 10, 1980, D.C. Law 3-86, § 511, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1661.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

CASE NOTES

ANALYSIS

Construction with other laws.

Due process.

In general.

Construction with other laws.

Transfer of apartment building by corporation to its subsidiary, followed by transfer of 99% of the stock of the subsidiary to new shareholder, was not an unfair trade practice under the Consumer Protection Procedures Act (CPPA), though it may have triggered tenants’ right to purchase the building under the Rental Housing Conversion and Sale Act; the CPPA did not mention the Sales Act though the CPPA explicitly stated that violations of other statutes constituted a violation of the CPPA, Sales Act contained its own detailed provisions for implementation and enforcement, and the CPPA expressly forbade the Department of Consumer and Regulatory Affairs (DCRA) from applying the administrative remedies of the CPPA to landlord-tenant relations. *Gomez v.*

Independence Mgmt. of Delaware, Inc., 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Due process.

Statute conditioning condominium conversion upon approval of majority vote of eligible tenants did not violate due process rights of property owners on theory the tenant consent requirement impermissibly delegated legislative authority to private citizens without providing standards for granting or withholding of consent. D.C. Code 1981, § 45-1601 et seq.; U.S. Const. Amends. 5, 14. *Hornstein v. Barry*, 560 A.2d 530, 1989 D.C. App. LEXIS 121 (1989).

In general.

District of Columbia Rental Housing Conversion and Sale Act, which entitles tenants to purchase rental property, requires tenants to purchase entire property rather than just one or two buildings. D.C. Code 1981, §§ 45-1602(1), 45-1661. *Redmond v. Birkel*, 797 F. Supp. 36, 1992 U.S. Dist. LEXIS 12798 (1992).

If the court does not find ambiguity in the

Tenant Opportunity to Purchase Act (TOPA), the Act itself directs the court to construe it toward the end of strengthening the legal rights of residential tenants or residential tenant organizations to the maximum extent permissible under law. 1836 S St. Tenants Ass'n, Inc. v. Estate of Battle, 965 A.2d 832, 2009 D.C. App. LEXIS 18 (2009).

Provision in statutes addressing conversion or sale of rental housing, stating that purposes of such statutes favored resolution of ambiguity by hearing officer or court toward the end of strengthening the legal rights of tenants or tenant organizations to maximum extent permissible under law, applied only to interpretation of such statutes and therefore did not warrant instruction, in action by tenant organization to rescind sale of apartment building based on alleged lack of statutory notice of sale, which notice related to tenants' statutory right of first refusal, that ambiguities in evidence as

to whether tenants received notice had to be resolved in their favor. 3511 13th St. Tenants' Ass'n v. 3511 13th St., N.W. Residences, LLC, 922 A.2d 439, 2007 D.C. App. LEXIS 226 (2007).

Overarching purpose of the Tenant Opportunity to Purchase Act (TOPA) is to protect tenant rights. Allman v. Snyder, 888 A.2d 1161, 2005 D.C. App. LEXIS 646 (2005).

"Tenant opportunity to purchase" statute (TOTPS) did not permit the tenant to repudiate stipulation of settlement in landlord's suit for possession; if landlord was obligated to provide tenant with opportunity to purchase, her failure to do so violated TOTPS, not the agreement, which made no reference to TOTPS, and thus tenant's remedy was to seek enforcement of statute, rather than to repudiate agreement. D.C. Code 1981, § 45-1631(a). Brown v. Hornstein, 669 A.2d 139, 1996 D.C. App. LEXIS 1 (1996).

§ 42-3405.12. Declaration of continuing housing crisis.

(a) Within 1 month of the first annual anniversary date of the effective date of this chapter, and during the same period of each successive year, the Mayor shall determine and then declare whether there is a continuing housing crisis in the District. If the Mayor determines that at least 1 of the factors listed in subsection (b) of this section continue to exist, the Mayor shall declare that there is a continuing housing crisis. If the Mayor determines that none of the factors listed in subsection (b) of this section continue to exist, the Mayor shall declare there is no longer a housing crisis. The Mayor's declaration shall include the reasons for such determination.

(b) The factors which the Mayor shall consider in determining whether there is a continuing housing crisis in the District include, but are not limited to, the following:

(1) That the percentage of all rental housing units in the District which are vacant, habitable, and available for occupancy is less than 5%;

(2) That the number of new rental units made available for occupancy with the District of Columbia in the previous year is less than the number of units demolished, discontinued in use or converted to condominiums, cooperatives or nonhousing use;

(3) That the number of new or substantially rehabilitated units subsidized under federal or local publicly funded programs and made available for occupancy within the District of Columbia in the past year was less than 10,000 units; and

(4) The Mayor shall consider any other significant factors which relate to the supply of housing available for low-income District of Columbia citizens.

(c) If the Mayor declares that there is no longer a housing crisis within the District of Columbia, the Mayor shall submit a proposed resolution containing the declaration to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part,

within the 45-day review period, the proposed resolution shall be deemed approved. Upon the effective date of Council approval of the Mayor's proposed resolution declaring that there is no longer a housing crisis in the District of Columbia, or upon a date specified in the resolution, whichever is later, the provisions of this chapter shall no longer be in effect.

(Sept. 10, 1980, D.C. Law 3-86, § 512, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824; Sept. 6, 1995, D.C. Law 11-31, § 3(r), 42 DCR 3239.)

Prior Codifications. — 1981 Ed., § 45-1662.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(r) of Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1994 (D.C. Law 10-176, September 22, 1994, law notification 41 DCR 6076).

Emergency legislation. — For temporary amendment of section, see § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Historical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Historical and Statutory Notes following § 42-3402.03.

Legislative history of Law 10-144. — For

legislative history of D.C. Law 10-144, see Historical and Statutory Notes following § 42-3405.03a.

Legislative history of Law 11-31. — For legislative history of D.C. Law 11-31, see Historical and Statutory Notes following § 42-3405.03b.

Mayor's Orders. — Declaration of continuing housing crisis: See Mayor's Order 85-170, October 10, 1985.

Editor's notes. — Reenactment of Law 3-86: See Historical and Statutory Notes following § 42-3401.01.

Amendment of section by Law 10-144: Section 2(r) of D.C. Law 10-144 purported to amend (c) of this section to read as follows:

"(c) If the Mayor declares that there is longer a housing crisis within the District of Columbia, the Mayor shall submit a proposed resolution containing the declaration to the Council for a 45-day period or review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part, within the 45-day review period, the proposed resolution shall be deemed approved. Upon the effective date of Council approval of the Mayor's proposed resolution declaring that there is no longer a housing crisis in the District of Columbia, or upon a date specified in the resolution, whichever is later, the provisions of this chapter shall no longer be in effect."

§ 42-3405.13. Severability.

If any provision of this chapter, or any section, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of the chapter and of the application of any other provision, section, sentence, clause, phrase, or word shall not be affected.

(Sept. 10, 1980, D.C. Law 3-86, § 513, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824.)

Prior Codifications. — 1981 Ed., § 45-1663.

Legislative history of Law 3-86. — For legislative history of D.C. Law 3-86, see Histor-

ical and Statutory Notes following § 42-3401.01.

Legislative history of Law 4-27. — For legislative history of D.C. Law 4-27, see Histor-

ical and Statutory Notes following § 42-3402.03.

RENTAL HOUSING GENERALLY

CHAPTER 35. RENTAL HOUSING GENERALLY.

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Subchapter I. Findings; Purposes; Definitions.

§ 42-3501.01. Findings.

The Council of the District of Columbia finds that:

(1) There is a severe shortage of rental housing available to citizens of the District of Columbia ("District").

(2) The shortage of housing is growing due to the withdrawal of housing units from the housing market, deterioration of existing housing units, and the lack of development of new or rehabilitation of vacant housing units.

(3) The shortage of housing is felt most acutely among low- and moderate-income renters, who are finding a shrinking pool of available dwellings.

(4) The cost of basic accommodation is so high as to cause undue hardship for many citizens of the District of Columbia.

(5) Many low- and moderate-income tenants need assistance to cover basic shelter costs, but the assistance should maximize individual choice.

(6) The Rent Stabilization Program ("Program") has a more substantial impact upon small housing providers than on large housing providers, and small housing providers find it more difficult to use the administrative machinery of the Program.

(7) Many small housing providers are experiencing financial difficulties and are in need of some special mechanisms to assist them and their tenants.

(8) The present Rent Stabilization Program should not be continued indefinitely and new approaches must be investigated to prevent the withdrawal of rental housing units from the market and the deterioration of existing rental housing units, and to increase the rental housing supply.

(9) The housing crisis in the District has not substantially improved since the passage of the Rental Housing Act of 1980.

(10) The Rent Stabilization Program should be extended for 6 years.

(11) This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare.

(July 17, 1985, D.C. Law 6-10, § 101, 32 DCR 3089.)

Cross references. — Real property tax assignment, applicable tenant protection provisions, see § 47-1303.04.

Rental housing conversion and sale, see § 42-3401.01 et seq.

Prior Codifications. — 1981 Ed., § 45-2501.

Legislative history of Law 6-10. — Law 6-10, the “Rental Housing Act of 1985,” was introduced in Council and assigned Bill No. 6-33, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was

assigned Act No. 6-23 and transmitted to both Houses of Congress for its review.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48, § 818 of D.C. Law 11-52, § 1202(b) of D.C. Law 13-172, and § 2 of D.C. Law 16-10, codified as § 42-3509.07, provided that all subchapters of this chapter, except III and V, shall terminate on December 31, 2010.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 6-10, see Mayor’s Order 85-167, October 2, 1985.

Mayor’s Orders. — See Mayor’s Order 86-27, February 6, 1986, as amended by Mayor’s Order 86-166, September 19, 1986.

CASE NOTES

ANALYSIS

Construction with other laws.

In general.

Purpose.

Construction with other laws.

Authority of the rental administrator and the Rental Housing Commission to enforce administrative laws and impose civil fines was not implicitly repealed by the Civil Infractions Act, which authorized the Department of Consumer and Regulatory Affairs to enforce the regulations and impose fines; Civil Infractions Act merely provided for supplemental authority to enforce the Rental Housing Act. *Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm’n*, 952 A.2d 190, 2008 D.C. App. LEXIS 298 (2008).

In general.

Landlord debtor’s rejection of residential leases in Chapter 11 proceeding did not relieve debtor of obligation to comply with local housing code regulations designed to protect public health and safety; rejection of executory contracts and leases only releases debtor from privately undertaken contractual obligations. *Bankr.Code*, 11 U.S.C. §§ 365, 365(h), 1101 et

seq.; 18 U.S.C. § 959(b). *Saravia v. 1736 18th Street, N.W., Ltd. Partnership*, 844 F.2d 823, 1988 U.S. App. LEXIS 4469 (C.A.D.C.1988).

District of Columbia housing code imposed on Federal Government same obligations as were imposed on other owners of residential property. 18 U.S.C. § 2674. *Valentine v. United States*, 706 F. Supp. 77, 1989 U.S. Dist. LEXIS 1999 (1989).

The District of Columbia Rental Housing Act did not apply to furnishing of dock space to houseboat. D.C. Code 1981, §§ 45-2501 et seq., 45-2503(14, 33). *Washington Channel Ltd. Partnership v. 56’ Carri-Craft Motor Yacht Named ‘Hubris’*, 687 F. Supp. 682, 1988 U.S. Dist. LEXIS 10934 (1988).

Purpose.

The goal of rent control, born of a perceived severe housing shortage, is to ensure that decent, affordable housing is available for the various sectors of the population, while at the same time landlords are allowed a fair rate of return on their investments. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm’n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

§ 42-3501.02. Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
- (4) To protect the existing supply of rental housing from conversion to other uses; and

(5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

(July 17, 1985, D.C. Law 6-10, § 102, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2502.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3501.01.

CASE NOTES

In general.

Landlord's notice to vacate provided to tenants was invalid under the Rental Housing Act of 1985, when landlord intended to hold the rental units vacant for 12 months following the evictions and then sell the rental units to owner-occupiers; the Act prohibited landlord from resuming any housing use of the units other than for rental housing, landlord could not avoid the Act by using a third party to do what it was not allowed to do itself, and landlord's intention was contrary to the purpose of the Act, which was to protect the existing supply of rental housing. *BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 2009 D.C. App. LEXIS 597 (2009).

Provision for substantial rehabilitation in Rental Housing Act of 1985, which effectively permits landlord to escape proscriptions of Act and substantially raise his rent, ought to be given parsimonious interpretation rather than expansive one. D.C. Code 1981, §§ 45-2501 et

seq., 45-2524. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Act should be liberally construed to achieve its purposes. D.C. Code 1981, § 45-2501 et seq. *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

Although neither District of Columbia Court of Appeals nor Rental Housing Commission is authorized to overlook jurisdictional requirements of Rental Housing Act in order to vindicate subjective notions of "fairness," it is appropriate for court, in resolving procedural issues with respect to which reasonable people might differ, to keep in mind remedial character of Act and important role which lay litigants play in its enforcement. D.C. Code 1981, § 45-2501 et seq. *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

§ 42-3501.03. Definitions.

For the purposes of this chapter, the term:

(1) "Annual fair market rental amount" means the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year, plus an amount equal to the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C. Standard Metropolitan Statistical Area, during each calendar year; provided, however, that if no rents were collected in the base calculation year because the housing accommodation was then under construction, the annual fair market rental amount shall be a sum equal to the rents which would have been collected during the base calculation year had the housing accommodation been 100% occupied during the entire base calculation year, the sum to be determined by appraisal, as increased by the Consumer Price Index increase under this paragraph.

(2) "Apartment improvement program" means the program which is administered with grant funds from title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), by the District of Columbia Department of Housing and Community Development, developed by the

Neighborhood Reinvestment Corporation under the national Neighborhood Reinvestment Corporation Act (42 U.S.C. § 8101 et seq.), and operated under the supervision of the public-private Partnership Committee, which program has been established for the purpose of finding solutions to the economic and physical distress of moderate income rental apartment buildings by joining the tenants, housing provider, noteholder, and the District government in a collective effort.

(3) “Base calculation year” means the calendar year immediately preceding the first calendar year in which a given housing accommodation is made subject to §§ 42-3502.05(f) through 42-3502.19, or any future District law limiting the amount of rent which can lawfully be demanded or received from a tenant.

(4) “Base rent” means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

(5) “Building improvement plan” means the agreement executed between the parties of interest, including the tenants, housing provider, and the District government, at a property being treated under the apartment improvement program, which agreement sets forth the remedies to the property’s distress, including, but not limited to:

(A) A schedule of repairs and capital improvements which, at a minimum, will bring the property into substantial compliance with the housing regulations;

(B) A schedule of services and facilities; and

(C) A schedule of rents charged and rent increases; and which agreement is monitored by the District government until it expires upon completion of all physical improvements and other scheduled activities included therein.

(6) “Capital improvement” means an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 U.S.C.).

(7) “Cooperative housing association” means an association incorporated for the purpose of owning and operating residential real property in the District, the shareholders or members of which, by reason of their ownership of stock or membership certificate, a proprietary lease, or evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

(8) “Council” means the Council of the District of Columbia.

(9) “Distressed property” means a housing accommodation that:

(A) Is experiencing, and has experienced for at least 2 years, a negative cash flow;

(B) Has been cited by the Department of Consumer and Regulatory Affairs as being in substantial noncompliance with the housing regulations;

(C) Has been subject to deferred maintenance as a result of negative cash flow; and

(D) Has been in arrears on either permanent mortgage loan-payments, property tax payments, fuel and utility payments, or water or sewer fee payments.

(10) "Division" means the Rental Accommodations Division or the Rental Conversion and Sale Division established by § 42-3502.03.

(11) "Dormitory" means any structure or building owned by an institution of higher education or private boarding school, in which at least 95% of the units are occupied by presently matriculated students of the institution of higher education or private boarding school.

(12) "Elderly tenant" means a person who is 60 years of age or older and, for the purposes of subchapter III of this chapter, a person who meets the requirements of § 42-3503.01(5) for eligible families and § 42-3503.01(8) for lower-income families.

(13) "Equity" means the portion of the assessed value of a housing accommodation that exceeds the total value of all encumbrances on the housing accommodation.

(14) "Housing accommodation" means any structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by § 47-2001(n)(1)(C).

(15) "Housing provider" means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

(16) "Housing regulations" means the most recent edition of the Housing Regulations of the District of Columbia as established by Commissioner's Order No. 55-1503, effective August 11, 1955.

(17) "Initial leasing period" means that period for which the first tenant of a rental unit rents the rental unit. For units described in § 42-3502.19, the first tenant is the tenant who rents the rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this chapter.

(18) "Interest payments" means the amount of interest paid during a reporting period on a mortgage or deed of trust on a housing accommodation.

(19) "Management fee" means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the housing provider, if the duties of the personnel are connected with the operation of the housing accommodation.

(20) "Maximum possible rental income" means the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the 12 consecutive months within the 15 months preceding the date of any filing required or permitted under this chapter.

(21) "Mayor" means the Office of the Mayor of the District of Columbia.

(22) "Operating expenses" means the expenses required for the operation of a housing accommodation for the 12 consecutive months within the 15 months preceding the date of its use in any computation required by any provision of this chapter, including, but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(23) "Other income which is derived from the housing accommodation" means any income, other than rents, which a housing provider earns because of his or her interest in a housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

(24) "Person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

(25) "Property taxes" means the amount levied by the District government for real property tax on a housing accommodation during a tax year.

(26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

(28) "Rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(29) "Rent ceiling" means that amount defined in or computed under § 42-3502.06.

(30) "Rental Accommodations Act of 1975" means the Rental Accommodations Act of 1975, effective November 1, 1975 (D.C. Law 1-33).

(31) "Rental Housing Act of 1977" means the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54).

(32) "Rental Housing Act of 1980" means the Rental Housing Act of 1980, effective March 4, 1981 (D.C. Law 3-131; Chapter 40 of this title).

(33) "Rental unit" means any part of a housing accommodation as defined in paragraph (14) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

(33A) "Single-room-occupancy housing" means a rental housing accommodation comprised of rental units, each of which is intended for occupancy and

is occupied by a single adult either living alone or living with not more than 1 child of age 6 years or younger, and that may, but is not required to, contain sanitary and food-preparation facilities.

(34) "Substantial rehabilitation" means any improvement to or renovation of a housing accommodation for which:

(A) The building permit was granted after January 31, 1973; and

(B) The total expenditure for the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation.

(35) "Substantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

(36) "Tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

(37) "Uncollected rent" means the amount of rent and other charges due for at least 30 days but not received from tenants at the time any statement, form, or petition is filed under this chapter.

(38) "Vacancy loss" means the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included in vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent.

(July 17, 1985, D.C. Law 6-10, § 103, 32 DCR 3089; Aug. 25, 1994, D.C. Law 10-155, § 2(a), 41 DCR 4873; Sept. 18, 2007, D.C. Law 17-20, § 2003(a), 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-353, § 184(a), 56 DCR 1117.)

Cross references. — Improvement program for distressed property, see § 42-3508.04.

Section references. — This section is referred to in §§ 6-751.11, 42-903, 42-2851.02, 42-3171.01, 42-3173.01, 42-3502.06, 42-3502.09, 42-3502.21, 47-830, and 47

Prior Codifications. — 1981 Ed., § 45-2503.

Effect of amendments. — D.C. Law 17-20 rewrote par. (10), which had read as follows: "(10) 'Division' means the Rental Accommodations and Conversion Division as continued by § 42-3502.01."

D.C. Law 17-353 validated a previously made technical correction in par. (5)(C).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2003(a), of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 10-155. — For legislative history of D.C. Law 10-155, see Historical and Statutory Notes following § 42-3508.06.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Short title. — Short title: See Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3501.01.

Editor's notes. — "D.C. Law 3-131; Chapter 40 of this title", referred to in (32), expired, except for subchapter V, April 30, 1985; subchapter V was repealed by § 905 of D.C. Law 6-10, effective July 17, 1985.

CASE NOTES

ANALYSIS

Capital improvements.
 Construction and application.
 Housing accommodation.
 Judicial review.
 Persons or property not covered by Act.
 Rent.
 Right of possession.
 Small landlord exemption.
 Substantial reduction in services.
 Substantial rehabilitation.
 Subtenants.
 Type of tenancy.
 Vacancy loss.

Capital improvements.

Analysis of whether to grant housing provider's capital improvement petition must include, not only, determination that proposed item would increase the value or worth of the habitability of the housing accommodation, but also whether the proposed improvement would singularly, or in conjunction with other proposed improvements, serve to erode availability of moderately priced housing. D.C. Code 1981, §§ 45-2502, 45-2520. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Plain meaning of statute providing when rent administrator may approve rent adjustment to cover cost of capital improvements requires that all proposed improvements increase the habitability of the housing accommodation. D.C. Code 1981, § 45-2520. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Replacement of boiler and elevators was "capital improvement" for which landlord was entitled under Rental Housing Act to capital improvement rent increase of \$30 per month. D.C. Code 1981, § 45-2503(6). *Cafritz Co. v. District of Columbia Rental Housing Com.*, 615 A.2d 222, 1992 D.C. App. LEXIS 261 (1992).

Renovation or improvement that is excluded from definition of "capital improvement" and for which landlord is thus not entitled to capital improvement rent increase under Rental Housing Act, is ordinary replacement, not just any replacement. D.C. Code 1981, § 45-2503(6). *Cafritz Co. v. District of Columbia Rental Housing Com.*, 615 A.2d 222, 1992 D.C. App. LEXIS 261 (1992).

Rental Housing Commission acted consistently with Rental Housing Act when it allocated cost of converting freight elevator to passenger elevator pursuant to landlord's capital improvement petition equally among residential and commercial tenants, despite evidence

that commercial tenants were responsible for more traffic into elevators than were residential tenants. D.C. Code 1981, § 45-2520(c). 1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Housing Com., 575 A.2d 306, 1990 D.C. App. LEXIS 139 (1990).

Construction and application.

Rental Housing Act is remedial statute which must be liberally construed to achieve its purposes. D.C. Code 1981, § 45-2501 et seq. 1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Housing Com., 575 A.2d 306, 1990 D.C. App. LEXIS 139 (1990).

Housing accommodation.

District of Columbia Rental Housing Commission reasonably interpreted definition of "housing accommodation" in Rental Housing Act as requiring owner seeking exemption to establish not only the transient use of property as of May 20, 1980, but also current transient use; statute provided that "housing accommodation" does not include any hotel or inn with valid certificate of occupancy or any structure, including any room in structure, used primarily for transient occupancy and in which at least 60 percent of rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. D.C. Code 1981, § 45-2503(14). *'N' St. Folies Ltd. Pshp. v. District of Columbia Rental Hous. Comm'n*, 622 A.2d 61, 1993 D.C. App. LEXIS 75 (1993).

Judicial review.

Tenant was entitled to a stay of writ of eviction pending appeal in landlord's action regarding breach of consent agreement on unpaid rent; the upheaval of tenant from his home, even if he could find alternative housing, created a cognizable irreparable injury, and the tenant had a clear likelihood of prevailing on his claim that he was entitled to a Drayton v. Poretsky Mgmt. stay pending the final determination of his administrative challenge to the rental increase that formed the basis of landlord's claim that tenant breached consent agreement. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Court of Appeals' review of District of Columbia Rental Housing Commission's interpretation of meaning of "housing accommodation" in Rental Housing Act is deferential. D.C. Code 1981, § 45-2503(14). *'N' St. Folies Ltd. Pshp. v. District of Columbia Rental Hous. Comm'n*, 622 A.2d 61, 1993 D.C. App. LEXIS 75 (1993).

Persons or property not covered by Act.

The District of Columbia Rental Housing Act did not apply to furnishing of dock space to houseboat. D.C. Code 1981, §§ 45-2501 et seq., 45-2503(14, 33). *Washington Channel Ltd.*

Partnership v. 56' Carri-Craft Motor Yacht Named 'Hubris', 687 F. Supp. 682, 1988 U.S. Dist. LEXIS 10934 (1988).

Residents of shelter for homeless persons operated in federally owned building were not "tenants," entitled to 30 days notice to quit under District of Columbia Code [D.C. Code 1981, §§ 45-1403, 45-1404], because government never sought nor received any rent for use of shelter. D.C. Code 1981, § 45-1503(30). *Robbins v. Reagan*, 616 F. Supp. 1259, 1985 U.S. Dist. LEXIS 16689 (1985), affirmed in part by 780 F.2d 37, 250 U.S. App. D.C. 375, 1985 U.S. App. LEXIS 25053 (1985).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services did not occupy "rental unit" within meaning of Rental Housing Act of 1985, and thus were not "tenants" within meaning of Act; therefore, employer was not obligated to give them 30 days' notice to quit. D.C. Code 1981, §§ 45-2503(33, 36), 45-2551. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

Rent.

The determination of whether tenant breached consent agreement with landlord for unpaid rent, which breach entitled the landlord to evict tenant, rested solely on the legality of a rental increase that the tenant was challenging before the Department of Consumer and Regulatory Affairs, which had primary jurisdiction over the issue, and thus, the trial court was required to issue a stay under *Drayton v. Poretzky Mgmt.*, pending the final disposition of the administrative proceeding. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Provision in consent agreement between landlord and tenant providing for the permanent quashing of the writ of restitution upon tenant's payment of back rent and costs, even if met, did not relieve the tenant of the remaining obligations he assumed under the agreement or deprive the landlord of any remedies to which it was entitled thereunder, and thus, the stay provision for the initial writ did not foreclose the landlord's right to issuance of a second writ upon a showing that the tenant breached the agreement by failing to pay increased rent, where the tenant had agreed as part of consent agreement to pay rent on time for a period of one year, and the tenant gave up the right to seek a further stay of execution of the judgment or to redeem any judgment entered based upon his failure to timely pay rent. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Tenant, who entered into consent agreement with landlord regarding unpaid rent, did not claim that he mistakenly assumed at the time he entered into the agreement that the landlord

was relinquishing any rights to increase the rent in the future, and thus, the tenant was precluded from claiming that the consent agreement should be set aside due to a unilateral mistake of fact after landlord increased rent, where tenant had several rent increases during his tenancy and the landlord had no reason to believe that the tenant thought there could be no future increases given that the agreement did not foreclose landlord's right to increase rent or tenant's right to challenge such increases. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

A modification of a contract occurs when there is an alteration of its provision to include new or additional obligations, while leaving the original agreement otherwise intact. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Interpreting the term "rent" in consent agreement between landlord and tenant regarding unpaid rent to be consistent with the law that was in effect at the time the agreement was entered into did not constitute a modification of the agreement, even though the term was not defined in the agreement; the law in effect at the time of the agreement was deemed to be part of the agreement, and thus, construing the agreement consistent with that law did not introduce a new or different element into the agreement. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Under the terms of statute that defined rent that was in effect at the time parties entered into consent agreement regarding unpaid rent, "rent" constituted the amount charged by the landlord, including any increases lawfully implemented, rather than the amount that the tenant actually paid at the time of the agreement, and thus, nothing in the agreement precluded the landlord from later raising tenant's rent. *Akassy v. William Penn Apts., L.P.*, 891 A.2d 291, 2006 D.C. App. LEXIS 20 (2006).

Under the rent control laws, a rent ceiling is established for each rental unit by starting with a base rent and adding any duly authorized upward adjustments that are permitted from time to time. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n.*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Rental Housing Act is designed to stabilize rents and in establishing rent ceilings commands that violator shall be held liable for the amount by which the entire amount of money demanded, received or charged exceeds the applicable rent ceiling. D.C. Code 1981, §§ 45-2503, 45-2591(a). *Kapusta v. District of Columbia Rental Hous. Comm'n.*, 704 A.2d 286, 1997 D.C. App. LEXIS 249 (1997).

Rental Housing Commission's order demanding that landlord pay "rent refund" of money demanded that was never received, for amounts demanded in excess of rent ceiling,

comported with Rental Housing Act. D.C. Code 1981, §§ 45-2503, 45-2591(a). *Kapusta v. District of Columbia Rental Hous. Comm'n*, 704 A.2d 286, 1997 D.C. App. LEXIS 249 (1997).

Jury question was presented as to whether landlord suing for rent had satisfied statutory requirement for obtaining hardship increase in allowable rent, that it had substantially complied with housing code violations; tenant had testified that landlord had not abated preexisting housing code violations, which she had described in some detail, and landlord had offered evidence, including violation abatement cards, testimony by housing inspector, and his own testimony. D.C. Code 1981, §§ 45-2503(4), 45-2518(a)(1)(A), (b)(1), 45-2522. *McKenzie v. McCulloch*, 634 A.2d 430, 1993 D.C. App. LEXIS 300 (1993).

When Rental Housing Commission held that owner who filed hardship petition of multiple dwelling was not entitled, in calculating his net income from property, to deduct interest payments and mortgage loan because he failed to demonstrate that borrowed money had been reinvested in premises, the Commission could not require owner to treat same mortgage loan as encumbrance on property, thus reducing value of his equity in calculation of his rate of return under rent stabilization program. D.C. Code 1981, §§ 45-2501 et seq., 45-2502(1), 45-2522; §§ 45-1502(1), 45-1523 (repealed). *James Parreco & Son v. District of Columbia Rental Housing Com.*, 567 A.2d 43, 1989 D.C. App. LEXIS 246 (1989).

Rental Housing Commission properly set rent ceilings of all units in landlord's building as of registration at base rent level, notwithstanding landlord's contention that such decision led to permanent loss of all cost of living increases in ten-year period preceding time when landlord properly registered building. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Tenant whose lease was still in effect when fire broke out and who was not alleged to have caused or occasioned fire continued as "tenant" for purposes of determining number of tenants needed to voluntarily agree to adjustment of rent ceiling; therefore, in view of fact that tenant's inclusion meant that only 60% rather than 70% of tenants had signed agreement, agreement was properly invalidated. D.C. Code 1981, § 1-1510(a)(3)(A); § 45-1561(f) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

In view of fact that rent of a unit may not be increased above base rent unless unit is properly registered, and that almost full amount of rent overcharge award to tenant accrued prior to landlord's registration, Rental Housing Com-

mission properly determined that rent ceiling for unit was equal to base rent. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

If a landlord wishes to make certain payments part of a tenant's rental obligation the lease must unequivocally so provide since obligations not normally thought of as rent are not transformed into rent by virtue of this section. *Ruppert Real Estate, Inc. v. McCarter*, 111 WLR 1953 (Super. Ct. 1983).

Right of possession.

Tenant has a right not to have his or her possession interfered with except by lawful process, and violation of that right gives rise to a cause of action in tort. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

If tenant fails to pay rent or violates other conditions of tenancy and refuses to vacate voluntarily, housing provider may recover possession only through court process. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

If housing provider evicts tenant without process, provider can be liable in tort for wrongful eviction. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Assuming that police assisted tenant in wrongfully evicting apartment occupant, who claimed to be a subtenant, evidence of three reported cases and calls from several unspecified people allegedly complaining about wrongful evictions involving the police was insufficient to support inference of a de facto policy which would support § 1983 liability on occupant's constitutional claim against District of Columbia. 42 U.S.C. § 1983; D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

A commercial tenant may not raise the defense of retaliatory eviction to a landlord's action for possession of the premises. D.C. Code 1981, §§ 45-2503(15, 33, 36), 45-2552. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

Small landlord exemption.

Determination that landlord's ownership of five rental units rendered him ineligible for the small landlord exemption under the Rental Housing Act, regardless of his occupancy of one of the units, was error as a matter of law; unit occupied by landlord was not rented or offered for rent and thus could not be included in aggregate number of units under landlord's control for so long as landlord occupied unit.

D.C. Code 1981, § 45-1516(a)(3) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Finding that landlord had more than four residential tenants in her two rental buildings, so as not to be entitled to the small landlord exemption from rent control, was supported by substantial evidence. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Relative who pays "rent" in some form would occupy unit that is "offered for rent" and thus not excludable in determining landlord's entitlement to small landlord exemption from rent control, while if landlord provides free rental unit in order to assist a relative in need rather than as an attempt to circumvent rental housing laws, unit would presumably be excluded from aggregate number; cornerstone of landlord's claim for exclusion of such a unit is good faith. D.C. Code 1981, §§ 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Substantial reduction in services.

The fact that tenant suffered a substantial reduction in services when he was without heat when the boiler accidentally broke down did not automatically entitle tenant to a rent rebate; remand was necessary to determine whether the loss of services was unexpected, whether the restoration of heat within two days was prompt, and, if not, whether the landlord's failure to abate rent was willful. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

Substantial rehabilitation.

Hearing examiner's decision that each of improvements proposed by housing provider would enhance the habitability of housing accommodation, warranting rent increase, should have been upheld, even though not all items listed in petition as enhancing habitability were mentioned in housing code, or already existed in the rental unit. D.C. Code 1981, § 45-2520. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

In order to be entitled to substantial rehabilitation rent ceiling increase, property owner must show that total cost of proposed rehabilitation of premises equals or exceeds 50% of assessed market value of property and that rehabilitation is in interest of tenants; once these requirements have been met, property owner is entitled to rent ceiling increase which

may not exceed 125%. D.C. Code 1981, §§ 45-2503, 45-2524(a), (a)(2). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Cost of replacing kitchen furnishings in each apartment, which was approved by Rental Housing Commission, added to total proposed expenditures for uncontested renovations substantially exceeded half of assessed value of property, and, therefore, satisfied statutory minimum requirement for granting rent ceiling increase based on substantial rehabilitation of property. D.C. Code 1981, § 45-2503. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Landlord's petition for substantial rehabilitation of rental property could be approved by Rental Housing Commission without proof that existing conditions constituted danger to tenants' health, safety and welfare, which could not be remedied without major renovation, but existence or nonexistence of such conditions was relevant and must be one of rent administrator's principle areas of inquiry. D.C. Code 1981, §§ 45-2503(34), 45-2524, 45-2524(a), (a)(2), (c). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Subtenants.

Level of training to which District of Columbia should be held in training police officers for handling landlord-tenant disputes concerning possession was not within common knowledge of lay persons, and thus, expert testimony was required to establish standard of care, in ousted apartment occupant's action against District for negligent training and supervision arising from incident in which police officer allegedly assisted tenant in wrongfully evicting occupant, who claimed to be a subtenant. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Assuming that apartment occupant was tenant's subtenant, tenant could not evict him except through court process. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Genuine issue of material fact existed as to whether ousted apartment occupant was tenant's subtenant, precluding summary judgment on occupant's claim against District of Columbia based on police officer's alleged act of assisting tenant in a wrongful eviction. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Rental Housing Act of 1985, which enlarged protections afforded tenants without leases from sudden evictions, extends to subtenants. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Sublessor was statutorily prohibited from charging subtenants more rent than she paid to her landlord even if she paid utility and repair expenses associated with rental units; sublessor could not bear those expenses and pass them on to subtenants in form of rent. D.C. Code 1981, §§ 45-2516(a), 45-2503(28). *Slaby v. District of Columbia Rental Hous. Comm'n*, 685 A.2d 1166, 1996 D.C. App. LEXIS 262 (1996), writ of certiorari denied by 520 U.S. 1190, 117 S. Ct. 1478, 137 L. Ed. 2d 690, 1997 U.S. LEXIS 2612, 65 U.S.L.W. 3712 (1997).

Type of tenancy.

Parking garage for apartment complex was not commercial establishment whose expenses would be excluded in calculating landlord's return on equity, for purposes of request for substantial hardship rent increase; because substantial hardship statute specifically required income from garage to be considered, its expenses also belonged in hardship petition calculus. D.C. Code 1981, §§ 45-2503(23), 45-2522(b)(1). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

In context of protective order issued in landlord and tenant proceedings, trial court was not required to resolve factual controversy engendered by tenant's assertion that, despite facial

character of lease and tenancy, landlord had permitted him to use premises partially for residential purposes. D.C. Code 1981, §§ 45-2503(33), 45-2551(a, b). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

That residential tenant's lease may have been labeled "commercial" was, at best, irrelevant to landlord's claim of small landlord exemption from rent control laws and, at worst, was evidence of willful intention to circumvent the rental housing laws. D.C. Code 1981, §§ 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Vacancy loss.

Landlord has burden of proof on issue of whether he is entitled to vacancy loss deduction from maximum possible rental income (MPRI) for unit which is vacant and offered for rent during reporting period. D.C. Code 1981, § 45-2503(38). *Kates v. District of Columbia Rental Hous. Comm'n*, 630 A.2d 1131, 1993 D.C. App. LEXIS 219 (1993).

Landlord was not entitled to vacancy loss deduction from maximum possible rental income (MPRI) for rental unit which was undergoing renovation and which had not been offered for rent during relevant reporting period for landlord's hardship rent increase petition. D.C. Code 1981, § 45-2503(38). *Kates v. District of Columbia Rental Hous. Comm'n*, 630 A.2d 1131, 1993 D.C. App. LEXIS 219 (1993).

Subchapter II. Rent Stabilization Program.

§ 42-3502.01. Continuation of Rental Housing Commission; composition; appointment; qualifications; compensation; removal.

(a)(1) The Rental Housing Commission established by § 42-4012 [expired] is continued and shall be composed of 3 members appointed by the Mayor with the advice and consent of the Council. The terms of members of the Rental Housing Commission appointed under the Rental Housing Act of 1980 shall expire upon the confirmation of at least 2 new members appointed pursuant to this section but no later than 90 days after July 17, 1985, and the Mayor shall appoint the new members within 30 days of July 17, 1985. The Mayor shall designate 1 member of the Rental Housing Commission as the chairperson and administrative head. The date of swearing in for a majority of the members of the Rental Housing Commission appointed pursuant to this section shall become the anniversary date for all subsequent appointments.

(2) The first members appointed after July 1, 2010, shall serve the following terms:

(A) One member's term shall expire July 18, 2012.

(B) One member's term shall expire July 18, 2013.

(C) One member's term shall expire July 18, 2014.

(3) Upon the expiration of members' terms pursuant to paragraph (2) of this subsection, Commissioners shall serve 3-year terms.

(b) The Rental Housing Commission shall be composed of 3 persons admitted to practice before the District of Columbia Court of Appeals. All members of the Rental Housing Commission shall be residents of the District. No member shall be either a housing provider or a tenant.

(b-1) A member of the Rental Housing Commission shall possess skills and experience relevant to the following:

(1) Litigation, preferably including both appellate practice demonstrated by written work product and exposure to the concerns of pro se litigants;

(2) Administrative law, preferably in an area of complex regulation; or

(3) Housing law, preferably in the area of rental housing and rent control or rent stabilization.

(c) The Chairperson of the Rental Housing Commission shall receive annual compensation equivalent to that received by a District employee compensated at a grade 16 of the District schedule established under subchapter XI of Chapter 6 of Title 1 ("District schedule"). The other members of the Rental Housing Commission shall receive annual compensation equivalent to that received by a District employee at a grade 15 pursuant to the District schedule.

(d) Any person appointed to fill a vacancy on the Rental Housing Commission shall be appointed only for the unexpired term of the member whose vacancy is being filled.

(e) The Mayor shall remove any member of the Rental Housing Commission for good cause.

(July 17, 1985, D.C. Law 6-10, § 201, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 2(a), 34 DCR 5304; Oct. 7, 1987, D.C. Law 7-31, § 4, 34 DCR 3789; Apr. 20, 1999, D.C. Law 12-248, § 2, 46 DCR 1113; Mar. 12, 2011, D.C. Law 18-327, § 2(a), 58 DCR 14.)

Cross references. — Mayoral nomination of Rental Housing Commission, review and approval of Council, see § 1-523.01.

Merit system classification policy and grade levels, see § 1-611.01.

Prior Codifications. — 1981 Ed., § 45-2511.

Effect of amendments. — D.C. Law 18-327 rewrote subsec. (a); and added subsec. (b-1). Prior to amendment, subsec. (a) read as follows: "(a) The Rental Housing Commission established by § 42-4012 is continued and shall be composed of 3 members appointed by the Mayor with the advice and consent of the Council. The members' terms shall not exceed 3 years. Members may be appointed for successive terms. The terms of members of the Rental Housing Commission appointed under the Rental Housing Act of 1980 shall expire upon the confirmation of at least 2 new members

appointed pursuant to this section but no later than 90 days after July 17, 1985, and the Mayor shall appoint the new members within 30 days of July 17, 1985. The Mayor shall designate 1 member of the Rental Housing Commission as the chairperson and administrative head. The date of swearing in for a majority of the members of the Rental Housing Commission appointed pursuant to this section shall become the anniversary date for all subsequent appointments."

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — Law 7-30, the "Tenant Assistance Program and Rental Housing Commission Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-226, which was referred to the Com-

mittee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 30, 1987, and July 14, 1987, respectively. Signed by the Mayor on July 21, 1987, it was assigned Act No. 7-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-131. — Law 7-131, the “Boards and Commissions Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987, and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-248. — Law 12-248, the “Compensation Increase for the Chairperson of the Rental Housing Commission Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-707, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-587 and transmitted to both Houses of Congress for its review. D.C. Law 12-248 became effective on April 20, 1999.

Legislative history of Law 18-327. — Law 18-327, the “Rental Housing Commission Reform Amendment Act of 2010” was introduced in Council and assigned Bill No. 18-863, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on December 28, 2010, it was assigned Act No. 18-649 and transmitted to both Houses of Congress for its review. D.C. Law 18-327 became effective on March 12, 2011.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V shall terminate on December 31, 2000.

References in text. — Section 42-4012, referred to in the first sentence of subsection (a), expired pursuant to § 907 of D.C. Law 3-131 on April 30, 1985. See Chapter 40 of this title.

Editor's notes. — For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

CASE NOTES

In general.

Rental Housing Commission was not precluded from overruling its predecessor's deci-

sions. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

§ 42-3502.02. Powers and duties of Rental Housing Commission.

(a) The Rental Housing Commission shall:

(1) Issue, amend, and rescind rules and procedures for the administration of this chapter except rules and procedures subject to § 2-1831.05(a)(7);

(2) Decide appeals brought to it from decisions of the Rent Administrator, including appeals under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980; and

(3) Certify and publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year the annual adjustment of general applicability in the rent charged of a rental unit under § 42-3502.06.

(b)(1) The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter.

(2) A majority of the Rental Housing Commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the

remaining Rental Housing Commissioners to exercise all the powers of the Rental Housing Commission.

(3) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rental Housing Commission, shall issue an order requiring the contumacious person to appear before the Rental Housing Commission, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that Court for contempt.

(c) Upon the written request of the chairperson of the Rental Housing Commission, each department or entity of the District government may furnish directly to the Rental Housing Commission any assistance and information necessary for the Rental Housing Commission to carry out effectively this chapter.

(d) The Department of Housing and Community Development shall employ the staff necessary to assist the Rental Housing Commission in carrying out its functions. Of the staff employed, 3 shall be law clerks who shall assist each member of the Rental Housing Commission in the preparation of decisions and orders.

(July 17, 1985, D.C. Law 6-10, § 202, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 2(b), 34 DCR 5304; Apr. 9, 1997, D.C. Law 11-255, § 51(a), 44 DCR 1271; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889; Sept. 18, 2007, D.C. Law 17-20, § 2003(b), 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-353, § 215(c), 56 DCR 1117; June 3, 2011, D.C. 18-377, § 19, 58 DCR 1174.)

Section references. — This section is referred to in § 42-3502.04.

Prior Codifications. — 1981 Ed., § 45-2512.

Effect of amendments. — D.C. Law 16-145, in par. (a)(3), substituted “rent charged” for “rent ceiling”.

D.C. Law 17-20, in subsec. (d), substituted “The Department of Housing and Community Development” for “The Department of Consumer and Regulatory Affairs”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (d).

D.C. Law 18-377, in subsec. (a)(1), inserted “except rules and procedures subject to § 2-1831.05(a)(7)”.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-231, in subsec. (b)(2), substituted “One member” for “A majority”.

Section 4(b) of D.C. Law 18-231 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

For temporary (90 day) amendment of section, see § 2003(b), of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2 of Rental Housing Commission Quorum Emergency Amendment Act of 2010 (D.C. Act 18-460, July 7, 2010, 57 DCR 6058).

For temporary (90 day) amendment of section, see § 520 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 520 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 2 of Rental Housing Commission Quorum Emergency Amendment Act of 2011 (D.C. Act 19-52, April 27, 2011, 58 DCR 3880).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 16-145. — Law 16-145, the “Rent Control Reform Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-109 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 2006, and June 6, 2006, respectively. Signed by the Mayor on

June 15, 2006, it was assigned Act No. 16-391 and transmitted to both Houses of Congress for its review. D.C. Law 16-145 became effective on August 5, 2006.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Legislative history of Law 18-377. — Law 18-377, the “Criminal Code Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

In general.

Judicial review.

Jurisdiction of federal courts.

Rent ceiling increase.

Review by commission.

Stay of judicial proceedings.

Validity of regulations.

In general.

Rental Housing Commission was not precluded from overruling its predecessor's decisions. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission must give some explanation to justify its discretionary determinations as to percentage in rent ceiling increase awarded for proposed repairs in each category. *D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission had primary jurisdiction over validity of rent ceiling and tenant was not collaterally estopped from obtaining adjudication before the rental accommodations office by the superior court's assumption in an action for possession that the amount charged for the unit was proper. *D.C. Code 1981, § 45-1515. Yasuna v. District of Columbia Rental Housing Com.*, 504 A.2d 605, 1986 D.C. App. LEXIS 291 (1986).

Judicial review.

Landlords' claim that District of Columbia agency responsible for administering local rent

control laws intentionally deprived landlords of due process in carrying out adjudicatory functions was not within judicial review provision of District of Columbia Administrative Procedure Act and, therefore, exclusivity provision of that statute was inapplicable. *D.C. Code 1981, § 1-1510(a); U.S. Const. Amends. 5, 14. District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

Landlords' complaint challenging actions taken by officials of District of Columbia agency responsible for administering local rent control laws which were relatively unrelated to agency's formal decisional process were not cognizable in judicial review proceeding under District of Columbia Administrative Procedure Act and, therefore, those claims in federal court were not precluded by exclusivity provision of that statute. *D.C. Code 1981, § 1-1510(a); U.S.C. Const. Amends. 5, 14. District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

To persuade Court of Appeals to reject the Rental Housing Commission's (RHC) construction of rent control statutes and the Commission's own regulations, the challenging party must show that it is plainly wrong or incompatible with the statutory purpose. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Court of Appeals is obliged to sustain the Rental Housing Commission's (RHC) interpretation of rent control statutes and regulations the Commission promulgates unless it is un-

reasonable or embodies a material misconception of the law, even if a different interpretation also may be supportable. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

While Court of Appeals is the final arbiter of legal questions pertaining to landlord-tenant disputes, the Rental Housing Commission (RHC) is afforded considerable deference with respect to its interpretation of the rent control statutes it administers and the regulations it promulgates. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

In reviewing decision by Rental Accommodations and Conversion Division (RACD) voiding rent increases, Rental Housing Commission (RHC) improperly determined that landlord was exempt from rent increase restrictions of Rental Housing Act under *res judicata* principles; RHC improperly took official notice of entire RACD file in concluding that tenant petitioner had been party to prior proceeding, and prior RACD decision was insufficient to prove that tenant had been party to prior proceeding. D.C. Code 1981, §§ 1-1509(b), 45-2501 et seq. *Johnson v. District of Columbia Rental Hous. Comm'n*, 642 A.2d 135, 1994 D.C. App. LEXIS 81 (1994).

Court of Appeals' standard of review with respect to Rental Housing Commission's allowance or nonallowance of landlord's various proposed renovations pursuant to substantial rehabilitation petition is governed by applicable provisions of Administrative Procedure Act which provides that Court of Appeals may set aside agency decision which is found to be arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence in record. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(A, E). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Jurisdiction of federal courts.

Younger principles did not require dismissal of landlords' complaint alleging that District of Columbia agency responsible for administering local rent control laws intentionally deprived landlords of due process in carrying out adjudicatory functions where there were no ongoing proceedings in District of Columbia courts in which landlords could raise their federal constitutional claims. U.S.C. Const.Amend. 5, 14. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

District of Columbia Administrative Procedure Act did not bar landlords' attempt to bring section 1983 cause of action in federal court alleging that District of Columbia agency responsible for administering local rent control

laws intentionally deprived them of due process in carrying out adjudicatory functions and, therefore, District of Columbia courts did not have exclusive jurisdiction over landlords' case. D.C. Code 1981, § 1-1510; 42 U.S.C. § 1983. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

Remand was necessary for determination of whether landlords' claim that District of Columbia agency intentionally deprived them of due process in carrying out adjudicatory functions was barred by preclusion principles of collateral estoppel or *res judicata* based on landlords' previous and unsuccessful attempts to argue those claims before District of Columbia Court of Appeals. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

Rent ceiling increase.

Provision for substantial rehabilitation in Rental Housing Act of 1985, which effectively permits landlord to escape proscriptions of Act and substantially raise his rent, ought to be given parsimonious interpretation rather than expansive one. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Although showing of present danger to health, safety and welfare, not remedial by lesser measures, is not indispensable to landlord's case in petition for substantial rehabilitation rent ceiling increase statute does not authorize substantial rehabilitation leading to higher rents for optional or cosmetic changes which will render property more attractive, but which will ultimately result in replacement of tenants of low or moderate income by more affluent clientele. D.C. Code 1981, § 45-2524. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

In order to be entitled to substantial rehabilitation rent ceiling increase, property owner must show that total cost of proposed rehabilitation of premises equals or exceeds 50% of assessed market value of property and that rehabilitation is in interest of tenants; once these requirements have been met, property owner is entitled to rent ceiling increase which may not exceed 125%. D.C. Code 1981, §§ 45-2503, 45-2524(a), (a)(2). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

So long as Rental Housing Commission acts in conformity with governing statute, Commission, which is presumed to have expertise in this arcane area, has broad discretion to determine whether rehabilitation is or is not needed.

Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

To be entitled to substantial rehabilitation rent ceiling increase, it was sufficient for landlord to show that proposed rehabilitation was in tenant's interest in sense that tenants' received benefit, and approval of tenants as such was not required. D.C. Code 1981, §§ 45-1611(a), 45-2525. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

According to plain language of Rental Housing Act of 1985, showing that substantial rehabilitation is in interest of tenants is indispensable before petition may be granted; however, statute is not tenant-consent provision, and approval of tenants as such is not required. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

It is unduly paternalistic to operate on assumption that landlord can know what is best for tenants without asking them; tenants' perception of their own interest is not conclusive, but must be accorded serious consideration before Rental Housing Commission's determination as to landlord's petition for substantial rehabilitation is made. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Cost of replacing kitchen furnishings in each apartment, which was approved by Rental Housing Commission, added to total proposed expenditures for uncontested renovations substantially exceeded half of assessed value of property, and, therefore, satisfied statutory minimum requirement for granting rent ceiling increase based on substantial rehabilitation of property. D.C. Code 1981, § 45-2503. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Approval by Rental Housing Commission, in granting substantial rehabilitation rent ceiling increase, of proposed additions to bathrooms, which would result in improvement to appearance of bathrooms, was not arbitrary, capricious, abuse of discretion, or contrary to law even though improvement to appearance was arguably similar to cosmetic changes prohibited under Rental Housing Act of 1985. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

In determining amount of increase which should be authorized for each category of repairs proposed in petition for substantial rehabilitation rent ceiling increase, some consider-

ation should be given to tenants' contention that rent ceiling increases approved by Rental Housing Commission would allow owner to recoup his entire investment for renovations in very short time. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission should determine whether 1989 regulation, which provides that when substantial rehabilitation rent ceiling increase is granted, property owner must recoup his investment over amortization period of loan or over 240 months, can be applied to case filed prior to effective date of regulation, and, even if it cannot, regulation may provide some useful guide for determining appropriate amount of rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Large amounts of time and money should not be expended in order to fight over relatively minor items, in determining amount of substantial rehabilitation rent ceiling increase to be awarded property owner, and proceedings on remand to Rental Housing Commission should be conducted with that consideration in mind. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Landlord's petition for substantial rehabilitation of rental property could be approved by Rental Housing Commission without proof that existing conditions constituted danger to tenants' health, safety and welfare, which could not be remedied without major renovation, but existence or nonexistence of such conditions was relevant and must be one of rent administrator's principle areas of inquiry. D.C. Code 1981, §§ 45-2503(34), 45-2524, 45-2524(a), (a)(2), (c). Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Pursuant to Administrative Procedure Act, Rental Housing Commission must address each material contested issue of fact in landlord's petition for substantial rehabilitation, and each of agency's findings must be supported by substantial evidence. D.C. Code 1981, § 1-1510(a)(3)(E). Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Testimony of property owner that kitchen furnishings in rental units were originally installed in 1950, were generally in state of disrepair and had exceeded their normal useful life and that renovations were necessary in order to replace water pipes in kitchens sup-

ported Rental Housing Commission's finding, in hearing on petition for substantial rehabilitation rent ceiling increase, that kitchen renovations were necessary and would benefit tenants in absence of any contradictory evidence in record. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Landlord's testimony in support of substantial rehabilitation rent ceiling increase that replacement of aged tile on laundry room floors and in common hallways throughout rental property was necessary supported Rental Housing Commission's finding that tile needed to be replaced. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Finding of Rental Housing Commission on petition for substantial rehabilitation rent ceiling increase that refurbishing of elevator cab would benefit tenants because it would reduce future maintenance expenses by eliminating need for future painting was not sufficiently irrational to warrant setting it aside even though some refurbishing was partially cosmetic in character. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Record was insufficient to support finding of Rental Housing Commission that removal of mailboxes from lobby would render premises more secure so as to permit inclusion of costs of removal in substantial rehabilitation rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Evidence was insufficient to support finding of Rental Housing Commission that replacement of light fixtures in hallways and stairwells of rental property was necessary, so as to permit inclusion of cost of replacement in substantial rehabilitation rent ceiling increase, in view of uncontroverted testimony of apparent underutilization of existing fixtures. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission was required to exclude from substantial rehabilitation rent ceiling increase proposed expenditure for replacement of light fixtures in garage on grounds that garage spaces were not provided to tenants as part of rent. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Evidence was insufficient to support finding of Rental Housing Commission that proposed general contractor's fee was justified so as to permit inclusion of fee in substantial rehabilitation rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission did not abuse its discretion in awarding treble damages on basis that landlord exceeded maximum allowable rent ceiling. D.C. Code 1981, § 45-1591(a). Yasuna v. District of Columbia Rental Housing Com., 504 A.2d 605, 1986 D.C. App. LEXIS 291 (1986).

Review by commission.

Rental Housing Commission (RHC) had authority to dismiss residential landlord's appeal of Rent Administrator's decision in favor of tenant as to tenant's complaint alleging housing code violations, as sanction for the failure of landlord and his counsel to appear at RHC's scheduled hearing for the appeal; RHC's catch-all regulation incorporated the civil procedure rules for the courts as to procedural points on which the regulations were silent, the civil procedural rules allowed dismissal of an appeal as sanction for failure to appear, and RHC possessed inherent power to dismiss appeals as part of its general power to hear and dispose of motions as an appellate tribunal. Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

Rental Housing Commission (RHC) was not required to consider a sanction less than dismissal of the appeal, as to the failure of residential landlord and his counsel to appear for RHC's scheduled hearing on landlord's appeal of Rent Administrator's decision in favor of tenant as to tenant's complaint alleging housing code violations; landlord proposed a decision by RHC on the briefs but landlord did not submit any briefs, and landlord did not ask RHC for a continuance and for a rescheduling of the hearing. Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

Dismissal of residential landlord's appeal to Rental Housing Commission (RHC) was warranted, as sanction for the failure of landlord and his counsel to appear at RHC's scheduled hearing on landlord's appeal of Rent Administrator's decision in favor of tenant as to tenant's complaint alleging housing code violations, even if the failure to appear was not willful and instead was based on counsel's negligence in failing to note the hearing date on his calendar. Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

Stay of judicial proceedings.

While the Landlord and Tenant Branch of the Superior Court has jurisdiction over possessory

actions, when there is pending before the Rent Administrator or the Rental Housing Commission (RHC) a challenge to a rent increase that bears upon the amount of rent owed by a tenant defending a possessory action brought for nonpayment of rent, the judge should stay the action to await the ruling of the Administrator or RHC, under doctrine of primary jurisdiction. *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

In a possessory action brought for nonpayment of rent, trial court could lift Drayton stay of action and enter judgment for landlord after raising the protective order amount of rent, based on decision of Rent Administrator granting landlord's hardship petition for rent increase, where no administrative stay was allowed by Rental Housing Commission (RHC) and tenant did not comply with order. *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

Primary jurisdiction doctrine did not prohibit the trial court, in a suit for nonpayment of rent, from modifying a protective order to reflect a rent increase approved by the Rent Administrator in a separate proceeding, where administrative appeals of the approval had not been exhausted but where the Rental Housing Commission (RHC) had refused to stay enforcement of the increase. *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

In a possessory action brought for nonpayment of rent, tenant's equitable right of redemption did not prevent trial court from raising the protective order amount of rent, based on decision of Rent Administrator granting landlord's hardship petition for rent increase,

and setting redemption figure equal to the total unpaid installments of the protective order. *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

Validity of regulations.

Rental Housing Commission (RHC) did not misinterpret rent control laws in finding that low-income housing provider forfeited its right to rent ceiling adjustments by failing to perfect them by timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability; none of provider's certificates of election were filed within requisite 30 days of effective dates of adjustments, but were instead filed late or not at all. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n.*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Just as statutes should be construed in manner that not only upholds their constitutionality but also steers clear of uncertainty on that score, regulation should be interpreted, if possible, in manner which avoids real or potential conflict with statute pursuant to which it was promulgated. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Court of Appeals accords great deference to interpretation by Rental Housing Commission of statute or regulation which it administers; Court of Appeals will reject Commission's interpretation of its regulations only if it is plainly wrong or incompatible with statutory purpose. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

§ 42-3502.02a. Immunity for official acts.

Members and staff of the Rental Housing Commission shall not be subject to liability for their official acts. Persons assisting the Rental Housing Commission, whether paid or pro bono, shall not be subject to liability for actions taken to perform services on behalf of the Commission.

(July 17, 1985, D.C. Law 6-10, § 202a, as added Mar. 12, 2011, D.C. Law 18-327, § 2(b), 58 DCR 14.)

Legislative history of Law 18-327. — For history of Law 18-327, see notes under § 42-3502.01.

§ 42-3502.03. Rental Accommodations Division of the Department of Housing and Community Development.

There is established within the Department of Housing and Community

Development the Rental Accommodations Division, which shall have as its head a Rent Administrator.

(July 17, 1985, D.C. Law 6-10, § 203, 32 DCR 3089; Sept. 18, 2007, D.C. Law 17-20, § 2003(c), 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-366, § 2(b), 56 DCR 1332.)

Cross references. — Merit system classification policy and grade levels, see § 1-611.01.

Section references. — This section is referred to in §§ 42-3401.03, 42-3501.03, and 42-3502.04b.

Prior Codifications. — 1981 Ed., § 45-2513.

Effect of amendments. — D.C. Law 17-20 rewrote the section.

D.C. Law 17-366 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2003(c) of Fiscal Year 2008 Budget Support Emergency

Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

§ 42-3502.03a. Rent Administrator — Appointment and removal.

(a) The Rent Administrator shall be appointed by the Mayor with the advice and consent of the Council.

(b) The Mayor shall transmit a nomination of the Rent Administrator to the Council, for a 90-day period of review, excluding days of Council recess, including any Rent Administrator holding that position on March 25, 2009. If the Council does not approve by resolution a nomination of the Rent Administrator within the 90-day period of review, the nomination shall be deemed disapproved.

(c) The Rent Administrator shall serve a 3-year term. The Mayor may appoint the same person to serve as the Rent Administrator for successive terms subject to the advice and consent of the Council as provided by subsection (b) of this section.

(d) The Mayor shall nominate a Rent Administrator within 6 months of:

(1) March 25, 2009; or

(2) The occurrence of a vacancy in the position of Rent Administrator.

(e) The Mayor shall remove the Rent Administrator for cause only; provided, that the Mayor shall provide the Council with a written justification within 30 days of the removal.

(July 17, 1985, D.C. Law 6-10, § 203a, as added Mar. 25, 2009, D.C. Law 17-366, § 2(d), 56 DCR 1332.)

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

Editor's notes. — Former § 42-3502.03a

has been recodified as § 42-3502.04b by D.C. Law 17-366, § 2(c).

§ 42-3502.03b. Rent Administrator — Qualifications and compensation.

The Rent Administrator shall:

(1) Be admitted to practice before the District of Columbia Court of Appeals by the time the Rent Administrator's term of office commences;

(2) Be a resident of the District within 6 months of the commencement of the Rent Administrator's term of office;

(3) Possess skills and expertise relevant to rental housing, preferably in the area of rent control or rent stabilization; and

(4) Receive annual compensation equivalent to that received by a District employee compensated at the grade of 15 of the District schedule established under subchapter XI of Chapter 6 of Title 1 [§ 1-611.01 et seq.].

(July 17, 1985, D.C. Law 6-10, § 203b, as added Mar. 25, 2009, D.C. Law 17-366, § 2(e), 56 DCR 1332.)

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

§ 42-3502.04. Duties of the Rent Administrator.

(a) The Rent Administrator shall draft rules and procedures for the administration of this chapter to be transmitted to the Rental Housing Commission for its action under § 42-3502.02(a)(1).

(b) The Rent Administrator shall carry out, according to rules and procedures established by the Rental Housing Commission under § 42-3502(a)(1), the rent stabilization program established under this subchapter, and shall perform other duties necessary and appropriate to, and consistent with this chapter.

(c) The Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapters II, IV, V, VI, and IX of this chapter and title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.

(d)(1) The Rent Administrator may employ, with funds available to the Rent Administrator, personnel and consultants, including hearing examiners, accountants, and legal counsel, reasonably necessary to carry out this chapter.

(2) In accordance with the regulations issued by the Rental Housing Commission, the Rent Administrator may delegate authority to those employees appointed in conformity with paragraph (1) of this subsection. This authority may include, but is not limited to:

(A) Hearing administrative petitions filed or initiated under this chapter;

(B) Issuing decisions on the petitions; and

(C) Rendering final orders on any petition heard by those employees.

(e) The Rent Administrator or a designee may attend all policy meetings of the Rental Housing Commission.

(f) The Rent Administrator shall establish and maintain a formal relation-

ship with the Landlord/Tenant Branch of the Superior Court of the District of Columbia and the Metropolitan Police Department.

(g) The Rent Administrator may issue at the request of any person an advisory opinion on issues of first impression under this chapter.

(h)(1) The Rent Administrator may hold hearings, sit and act at those times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents the Rent Administrator may consider necessary in carrying out his or her functions under this chapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rent Administrator, shall issue to the contumacious person an order requiring that person to appear before the Rent Administrator, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of that person to obey any order of the Superior Court of the District of Columbia may be punished by that Court as contempt.

(i) Upon the written request of the Rent Administrator, each department or entity of the District government may furnish directly to the Rent Administrator assistance and information necessary to discharge effectively the functions required under this chapter.

(j) The Rent Administrator shall publish in English and Spanish within 60 days after July 17, 1985, a booklet or other written material describing the rights and obligations of tenants and housing providers and procedures under this chapter. This material shall be distributed through the District libraries and other District offices with which the public has frequent contact and at the office of any community organization which requests to distribute the material.

(k) The Rent Administrator shall publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year in the D.C. Register the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA), during the preceding calendar year.

(l) In preparation for the transfer of jurisdiction of the Rent Administrator's adjudicatory function to the Office of Administrative Hearings pursuant to § 2-1831.03(b-1), the Rent Administrator shall submit a plan to the Mayor and Council by December 31, 2004 describing how the Rent Administrator's office will function after its adjudicatory responsibilities are transferred to the Office of Administrative Hearings, the legislative changes needed to prepare the Rent Administrator for its new role, and the resources needed to maintain its non-adjudicatory functions. The plan shall be developed in consultation with the Office of Administrative Hearings.

(July 17, 1985, D.C. Law 6-10, § 204, 32 DCR 3089; Dec. 7, 2004, D.C. Law 15-205, § 3503, 51 DCR 8441.)

Prior Codifications. — 1981 Ed., § 45-2514.

Effect of amendments. — D.C. Law 15-205 added subsec. (l).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3503 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3503 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 42-1103.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

References in text. — Title V of the Rental Housing Act of 1980, referred to in subsection (c), was title V of D.C. Law 3-131, repealed July 17, 1985, by D.C. Law 6-10, § 905.

CASE NOTES

ANALYSIS

Compliance with orders.

Finality of orders.

In general.

Compliance with orders.

Manager of leased property which filed suit for possession on basis of residential use of property allegedly in violation of lease within 45 days of rent administrator's order, which required registration of property as housing accommodation within 45 days after issuance of decision if noncommercial tenants were still residing within property, complied with rent administrator's order. *City Wide Learning Center, Inc. v. William C. Smith & Co.*, 488 A.2d 1310, 1985 D.C. App. LEXIS 290 (1985).

Where landlord attempted to comply with rent administrator's conditions for granting landlord's "hardship petition" and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord's action for possession based on the conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

In landlord's action for possession based on tenant's failure to pay increased rent, evidence that landlord did not comply, until September

4, 1981, with rent administrator's condition for increased rent that landlord remedy existing housing code violations and that the Rental Housing Commission receive notification from the Department of Housing and Community Development that the violations had been abated, was sufficient to support finding that landlord was not entitled to rent increase until November 1, 1981, following the required 30-day notice after full compliance with the rent administrator's decision. D.C. Code 1981, § 45-1519(b); D.C. Code 1980 Supp. §§ 45-1689, 45-1689(b)(1). *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Finality of orders.

Rent administrator's decision that leased property was commercial and that lessee was current commercial tenant was final order, since lessee did not appeal; therefore, if hearing was essential equivalent of judicial proceeding, trial court, in subsequent action for possession on basis of lessee's residential use of property, would have been bound by rent administrator's finding as matter of collateral estoppel. *City Wide Learning Center, Inc. v. William C. Smith & Co.*, 488 A.2d 1310, 1985 D.C. App. LEXIS 290 (1985).

In general.

A party may come directly to the trial court only to enforce, not to challenge, a decision of the rent administrator. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

§ 42-3502.04a. Rental Conversion and Sale Division of the Department of Housing and Community Development Rental Conversion and Sale Administrator.

(a) There is established within the Department of Housing and Community

Development the Rental Conversion and Sale Division, which shall have as its head a Rental Conversion and Sale Administrator.

(b) The Rental Conversion and Sale Administrator shall receive annual compensation equivalent to that received by a District employee compensated at the grade of 15 of the District schedule established under subchapter XI of Chapter 6 of Title 1 [§ 1-611.01 et seq.].

(July 17, 1985, D.C. Law 6-10, § 204a, as added Mar. 25, 2009, D.C. Law 17-366, § 2(f), 56 DCR 1332.)

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

§ 42-3502.04b. Transfer of functions of the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs to the Department of Housing and Community Development.

All positions, property, records, and unexpended balances of appropriations, allocations, assessments, and other funds available or to be made available to the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs relating to the duties and functions assigned to the Division pursuant to § 42-3502.03(a) are transferred to the Department of Housing and Community Development.

(July 17, 1985, D.C. Law 6-10, § 203a, as added Sept. 18, 2007, D.C. Law 17-20, § 2003(d), 54 DCR 7052; redesignated § 204b, Mar. 25, 2009, D.C. Law 17-366, § 2(c), 56 DCR 1332.)

Prior Codifications. — 2001 Ed., § 42-3502.03a

Emergency legislation. — For temporary (90 day) addition, see § 2003(d) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 42-2802.

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

Editor's notes. — Former § 42-3502.03a has been recodified as § 42-3502.04b by D.C. Law 17-366, § 2(c).

§ 42-3502.04c. Housing Regulation Administration; Housing Regulation Administrator.

(a) There is established within the Department of Housing and Community Development, the Housing Regulation Administration, which shall have as its head a Housing Regulation Administrator. The Housing Regulation Administrator shall be appointed by, and report directly to, the Director of the Department of Housing and Community Development.

(b)(1) The Housing Regulation Administration shall provide such administrative support to the Rent Administrator and the Rental Conversion and Sale Administrator as may be necessary to fulfill their statutory and regulatory responsibilities.

(2) The Housing Regulation Administrator shall work cooperatively with the Rent Administrator and the Rental Conversion and Sale Administrator to promote administrative efficiency, complete and accurate record-keeping, and the prompt review and disposition of matters pending before them.

(3) The Housing Regulation Administrator shall not have a supervisory role over the Rent Administrator and the Rental Conversion and Sale Administrator.

(July 17, 1985, D.C. Law 6-10, § 204c, as added Mar. 25, 2009, D.C. Law 17-366, § 2(g), 56 DCR 1332.)

Legislative history of Law 17-366. — For Law 17-366, see notes following § 42-3401.03.

§ 42-3502.05. Registration and coverage.

(a) Sections 42-3502.05(f) through 42-3502.19, except § 42-3502.17, shall apply to each rental unit in the District except:

(1) Any rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized except units subsidized under subchapter III;

(2) Any rental unit in any newly constructed housing accommodation for which the building permit was issued after December 31, 1975, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued after January 1, 1980, provided, however, that this exemption shall not apply to any housing accommodation the construction of which required the demolition of an housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units;

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

(D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accom-

modation was, at the time of the decedent's death, already exempt under the terms of paragraphs (3)(A) and (3)(B) of this subsection; and

(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 42-3404.13(a)(3), or by § 42-4016(a)(3) [expired], a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.

(4) Any housing accommodation which has been continuously vacant and not subject to a rental agreement since January 1, 1985, and any housing accommodation previously exempt under § 206(a)(4) of the Rental Housing Act of 1980, provided that upon rere rental the housing accommodation is in substantial compliance with the housing regulations when offered for rent;

(5) Any rental unit in any structure owned by a cooperative housing association, if:

(A) The proprietary lease or occupancy agreement for the rental unit is owned by not more than 4 natural persons, who are shareholders or members of the cooperative housing association;

(B) None of the shareholders or members has an interest, directly or indirectly, in more than 4 rental units in the District of Columbia. A shareholder or member of a cooperative housing association owning a proprietary lease or occupancy agreement for a rental unit in an association shall not be deemed to have an indirect interest in any other rental unit in any structure owned by a cooperative housing association solely by virtue of ownership of a stock or membership certificate, proprietary lease, or other evidence of membership in the association; and

(C) The shareholders or members owning the proprietary lease or occupancy agreement for the rental unit file with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the shareholders or members of a valid claim to the exemption. The claim of exemption statement shall also contain the signature of each person having an interest, direct or indirect, in the proprietary lease or occupancy agreement for the rental unit. Any change in the ownership of the proprietary lease or occupancy agreement or change in the shareholder's or member's interest in any other rental unit which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

(6) [Disapproved.]

(7) Housing accommodations for which a building improvement plan has been executed under the apartment improvement program and housing accommodations which receive rehabilitation assistance under other multi-family assistance programs administered by the Department of Housing and Community Development, if:

(A) The building improvement plan, accompanied by a certification signed by the tenants of 70% of the occupied units, is filed with the Division at the time of execution;

(B) Upon expiration of the building improvement plan, the exemption provided under this paragraph shall terminate and the housing accommodation will again be subject to §§ 42-3502.05(f) through 42-3502.19; and

(C) Upon expiration of the building improvement plan, and notwithstanding the provisions of § 42-3502.09, the schedule of rents charged, services, and facilities established by the building improvement plans shall be considered the rents charged and service and facility levels established for the purposes of subchapter II of this chapter;

(8) [Disapproved.]

(9) [Disapproved.]

(10) [Disapproved.]

(b) Rent may not be increased under subsections (a)(9) and (a)(10) of this section if:

(1) The unit is vacated as a result of eviction or termination of tenancy where the housing provider seeks in good faith to recover possession for occupancy by the housing provider or a member of the housing provider's family, or the housing provider seeks to recover possession in order to remove permanently the unit from rental housing; or

(2) The vacating of a rental unit by a tenant as a result of a housing provider creating an unreasonable interference with the tenant's comfort, safety, or enjoyment of the rental unit or as a result of retaliatory action under § 42-3505.02 shall not be considered a voluntary vacating of the unit.

(c) Notwithstanding subsections (b)(1) and (b)(2) of this section the housing provider shall be entitled to an exemption whenever the unit is next vacated in accordance with subsections (a)(9) and (a)(10)(A) of this section after an intervening loss of the exemption.

(d) Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

(e) This chapter shall not apply to the following units:

(1) Any rental unit operated by a foreign government as a residence for diplomatic personnel;

(2) Any rental unit in an establishment which has as its primary purpose providing diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes;

(3) Any dormitory; and

(4) Following a determination by the Rent Administrator, any rental unit or housing accommodation intended for use as long-term temporary housing by families with 1 or more members that satisfies each of the following requirements:

(A) The rental unit or housing accommodation is occupied by families that, at the time of their initial occupancy, have had incomes at or below 50% of the District median income for families of the size in question for the immediately preceding 12 months;

(B) The housing provider of the rental unit or housing accommodation is a nonprofit charitable organization that operates the unit or housing accommodation on a strictly not-for-profit basis under which no part of the net earnings of the housing provider inure to the benefit of or are distributable to

its directors, officers, or any private individual other than as reasonable compensation for services rendered; and

(C) The housing provider offers a comprehensive social services program to resident families.

(f) Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this chapter and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units. The registration form shall contain, but not be limited to:

(1) For each accommodation requiring a housing business license, the dates and numbers of that housing business license and the certificates of occupancy, where required by law, issued by the District government;

(2) For each accommodation not required to obtain a housing business license, the information contained therein and the dates and numbers of the certificates of occupancy issued by the District government, and a copy of each certificate;

(3) The base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges;

(4) The number of bedrooms in the housing accommodation;

(5) A list of any outstanding violations of the housing regulations applicable to the accommodation or an affidavit by the housing provider or manager that there are no known outstanding violations; and

(6) The rate of return for the housing accommodation and the computations made by the housing provider to arrive at the rate of return by application of the formula provided in § 42-3502.12.

(g)(1) A housing provider shall file the following notices with the Rent Administrator:

(A) A copy of the rent increase notice given to the tenant for a rent increase under § 42-3502.08(h)(2), within 30 days after the effective date of the increase; provided, that if rent increases are given to multiple tenants with the same effective date, the housing provider shall file a sample rent increase notice and a list attached stating the unit number, tenant name, previous rent charged, new rent charged, and effective date for each rent increase;

(B) A copy of the notice given to the tenant for an increase under § 42-3502.13(d) stating the calculation of the initial rent charged in the lease (based on increases during the preceding 3 years) within 30 days of the commencement of the lease term;

(C) A notice of a change in ownership or management of the housing accommodation, or change in the services and facilities included in the rent charged, within 30 days after the change.

(2) The Mayor shall establish an electronic database for the filing, storage, and retrieval of rent stabilization program documents.

(h) Each registration statement filed under this section shall be available for public inspection at the Division, and each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of the housing accommodation a duplicate of the registration statement.

(July 17, 1985, D.C. Law 6-10, § 205, 32 DCR 3089; May 23, 1986, D.C. Law 6-118, § 2, 33 DCR 2444; Feb. 24, 1987, D.C. Law 6-167, § 2, 33 DCR 6732; Feb. 24, 1987, D.C. Law 6-192, § 13(a), (b), 33 DCR 7836; Mar. 7, 1991, D.C. Law 8-222, § 2, 38 DCR 203; Apr. 9, 1997, D.C. Law 11-255, § 51(b), 44 DCR 1271; Aug. 5, 2006, D.C. Law 16-145, § 2(a), (b), 53 DCR 4889; Aug. 16, 2008, D.C. Law 17-219, § 7064, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 184(b), 56 DCR 1117.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.08, 42-3502.09, 42-3502.13, 42-3502.17, 42-3502.20, 42-3502.21, 42-3502.22, and 42-3504.01.

Prior Codifications. — 1981 Ed., § 45-2515.

Effect of amendments. — D.C. Law 16-145, in subpar. (a)(7)(C), substituted “rent charged” for “rent ceiling”; and rewrote subsec. (g), which had read as follows: “(g) An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes or substantially affects the rents including vacant unit rent increases under § 42-3502.13, services, facilities, or the housing provider or management of any rental unit in a registered housing accommodation. No amended registration statement shall be required for a change in rent under § 42-3502.06(b).”

D.C. Law 17-219, in subsec. (g)(2), substituted “The” for “Subject to appropriation, the”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (a)(7)(C).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a), (b) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-118. — Law 6-118, the “Leased Condominiums Temporary Clarification Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-401. The Bill was adopted on first and second readings on March 11, 1986, and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-153 and

transmitted to both Houses of Congress for its review.

Legislative history of Law 6-167. — Law 6-167, the “Rental Housing Act of 1985 Leased Condominiums Clarification Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-406, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 23, 1986, and October 7, 1986, respectively. Signed by the Mayor on October 16, 1986, it was assigned Act No. 6-216 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-192. — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-222. — Law 8-222, the “Low Income and Homeless Family Shelter Exemption Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-530, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-305 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 42-3502.02.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 42-1103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

References in text. — Section 42-3404.13(a)(3), referred to in subparagraph (a)(3)(E), was repealed March 16, 1978 by D.C. Law 2-54, § 903, 24 DCR 5334.

Section 42-4016, referred to in subsection (a)(3)(E), expired pursuant to § 907 of D.C. Law 3-131 on April 30, 1985.

Section 206(a)(4) of the Rental Housing Act of 1980, referred to in paragraph (a)(4), was codified as § 45-1515 1981 Ed., which expired April 30, 1985, pursuant to D.C. Law 3-131, § 907.

Editor's notes. — On November 5, 1985, pursuant to the Initiative, Referendum, and Recall Charter Amendments Act of 1977 (D.C. Law 2-46), the electorate of the District of Columbia rejected paragraphs (a)(6), (a)(8), (a)(9), and (a)(10) of § 205 of D.C. Law 6-10.

CASE NOTES

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Certificate of election.
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Exemptions generally.
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Indirect interest.
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Certificate of election.

Rental Housing Commission (RHC) did not misinterpret rent control laws in finding that low-income housing provider forfeited its right to rent ceiling adjustments by failing to perfect them by timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability; none of provider's certificates of election were filed within requisite 30 days of effective dates of adjustments, but were instead filed late or not at all. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Construction and application.

Provision of rent control statute requiring "[n]o amended registration statement" for a change in rent did not conflict with nor supersede rent control regulation requiring perfection of rent ceiling adjustments by timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability, lest face forfeiture of right to adjustment; there was a fundamental difference, manifest throughout rent control regulations, between increasing rent ceiling and increasing rent, regulation addressed the former, and statute the latter, specifically, regulation imposed filing requirements for perfection of rent ceiling adjustments of general applicability, not for rent increases based on those adjustments. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C.*

Rental Hous. Comm'n, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Exemptions generally.

Landlord has burden of proving that he is exempt from coverage of Rental Housing Act, and statutory exemptions are to be narrowly construed. D.C. Code 1981, § 45-2501 et seq. *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

Exemption from rent control laws should be narrowly construed. *Cambridge Management Co. v. District of Columbia Rental Housing Com.*, 515 A.2d 721, 1986 D.C. App. LEXIS 440 (1986).

Rental Housing Commission's determination that rental property was held in partnership, in determining that property was not eligible for exemption from rent control, was supported by substantial evidence, where property was purchased only three weeks after purchasers formed partnership established to purchase real property to lease or resell, partnership was listed as agent for collection of rental payments in lease, notice of rent increase designated return address of partnership, and purchaser testified that subject property was owned by partnership. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-1516(a)(3) (repealed). *Price v. District of Columbia Rental Housing Com.*, 512 A.2d 263, 1986 D.C. App. LEXIS 369 (1986).

Failure to register.

Landowner's failure to register his building, which was prerequisite to implementing rent increases, was not excused, despite landlord's contention that his failure to comply with registration requirement arose out of governmental negligence which prevented him from securing certificate of occupancy, which was needed to register. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Landlord did not "constructively register" his building, which was prerequisite to implement-

ing rent increases, by virtue of temporary registration number he was granted until he attained necessary final certificate of occupancy and housing business license. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Rental Housing Commission's award of trebled rent overcharges, due to landlord's failure to timely register his housing accommodation, was justified, despite landlord's contention that nonregistration constituted "technical" violation, that tenants had full use of property, that he attempted to comply with registration requirements, and that government error caused his nonregistration. D.C. Code 1981, § 45-1591(a) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

In general.

Service of subtenant petitions challenging rent upon sublessor at hearing before Rental Housing Commission (RHC) and reasonable continuance of hearing on petitions cured any problem of inadequate notice. D.C. Code 1981, § 45-2515(f). *Slaby v. District of Columbia Rental Hous. Comm'n*, 685 A.2d 1166, 1996 D.C. App. LEXIS 262 (1996), writ of certiorari denied by 520 U.S. 1190, 117 S. Ct. 1478, 137 L. Ed. 2d 690, 1997 U.S. LEXIS 2612, 65 U.S.L.W. 3712 (1997).

Members of foreign cooperative association, whose membership was terminated for failure to pay monthly carrying charges, were not entitled to 30-day notice to vacate under D.C. Rental Housing Act; members were tenants-at-will after their interest in cooperative was terminated, and as such, were entitled only to notice for tenants-at-will. D.C. Code 1981, §§ 45-1403, 45-2515(a)(6). *Snowden v. Benning Heights Cooperative, Inc.*, 557 A.2d 151, 1989 D.C. App. LEXIS 59 (1989).

Amnesty provision of Rental Housing Act of 1985 was unavailable to landlord in proceeding which were initiated by petitions filed under 1980 version of Act. D.C. Code 1981, §§ 45-2515(f), 45-2593. *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Tenant's claim that premises were fraudulently conveyed by landlord's father in effort to evade rent ceiling limitation was not required to file a plea of title since she was not claiming title in herself or in another under whom she claimed. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Tenant whose rent was raised when landlord's father transferred premises to his son and landlord then obtained rent ceiling exemption was not protected by fraudulent conveyance statute, although tenant contended that

building was transferred in effort to evade rent ceiling limitation. D.C. Code 1980 Supp. § 45-1681 et seq.; D.C. Code 1984, § 28-3101. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Indirect interest.

Management of rental properties, establishment and collection of rents, and obligation to pay encumbrances on properties did not create "indirect interest" for purposes of determining exemption from Rent Control Act for owners of four or fewer rental units. D.C. Code 1981, § 45-1516(a)(3). *Cambridge Management Co. v. District of Columbia Rental Housing Com.*, 515 A.2d 721, 1986 D.C. App. LEXIS 440 (1986).

Some form of ownership must exist for there to be "indirect interest" in property for purposes of Rent Control Act. D.C. Code 1981, § 45-1501 et seq. (repealed). *Cambridge Management Co. v. District of Columbia Rental Housing Com.*, 515 A.2d 721, 1986 D.C. App. LEXIS 440 (1986).

Rental Housing Commissioner's regulation interpreting "indirect interest" to mean "indirect ownership" for purposes of determining exemption from Rent Control Act for owners of four or fewer rental units was binding on Commission. D.C. Code 1981, § 45-1501 et seq. (repealed). *Cambridge Management Co. v. District of Columbia Rental Housing Com.*, 515 A.2d 721, 1986 D.C. App. LEXIS 440 (1986).

Landlord, as potential heir of his father who owned other apartments in District of Columbia, did not have indirect interest in other District of Columbia rental property such that his building did not qualify for rental ceiling exemption. D.C. Code 1980 Supp. § 45-1686; D.C. Code 1984, § 45-1516. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Judicial review.

Tenant's claims that landlord was not properly registered with Rental Accommodations and Conversion Division (RACD) and that rent increases were subject to requirements of rent control law could only be reviewed in the Court of Appeals after being first litigated before the Rental Housing Commission (RHC). D.C. Code 1981, § 1-1510(a). *Mack v. Zalco Realty*, 630 A.2d 1136, 1993 D.C. App. LEXIS 222 (1993).

Circumstances of case in which tenant claimed that landlord improperly claimed small landlord exemption from rent stabilization were not sufficiently exceptional to warrant District of Columbia Court of Appeals' consideration of issue of whether tenant received written notice of claim of exemption, an issue which tenant had failed meaningfully to preserve. D.C. Code 1981, § 45-1516(a)(3) (repealed). *Goodman v. District of Columbia*

Rental Housing Com., 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

Tenant did not waive, by his filings in the District of Columbia Court of Appeals or by an omission from filings, his right to assert claim that he did not receive notice of landlord's exemption from rent stabilization under "small landlord" provision of Rental Housing Act where tenant included issue in supplemental memorandum in lieu of brief. D.C. Code 1981, § 45-1516(a)(3) (repealed). *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

New construction exemption.

Scope of new construction exemption to rent control statute was not limited to property leased by natural persons and, thus, Rental Housing Commission had no authority to impose rent ceilings upon recently constructed unit owned by partnership. D.C. Code 1981, § 45-2515(a)(2). *Seman v. District of Columbia Rental Housing Com.*, 552 A.2d 863, 1989 D.C. App. LEXIS 8 (1989).

Persons subject to rent control law.

Sublessor was subject to rent control and was required to register with Rent Administrator. D.C. Code 1981, § 45-2515(f). *Slaby v. District of Columbia Rental Hous. Comm'n*, 685 A.2d 1166, 1996 D.C. App. LEXIS 262 (1996), writ of certiorari denied by 520 U.S. 1190, 117 S. Ct. 1478, 137 L. Ed. 2d 690, 1997 U.S. LEXIS 2612, 65 U.S.L.W. 3712 (1997).

Small landlord exemption.

Landlord met special circumstances exception to requirement that landlord must file for "small landlord" exemption with the rent administrator, where landlord was not a real estate professional and prepared lease by herself, without hiring a rental agent or attorney; in addition, shortly after purchasing property she moved to New York, and only returned to the District of Columbia to live for a brief period, and never received notice from District that she was required to file certificate of exemption. D.C. Code 1981, § 45-1516(a)(3)(C). *Hanson v. District of Columbia Rental Housing Com.*, 584 A.2d 592, 1991 D.C. App. LEXIS 2 (1991).

Landlords are permitted to remove rental units from market, and although vacant or temporarily withdrawn units are to be counted in determining eligibility for exemption from coverage of Rental Housing Act on basis that landlord is a small landlord with four or fewer units, permanently withdrawn units are not. D.C. Code 1981, § 45-2501 et seq.; § 45-1516(a)(3) (repealed). *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

Rental Housing Commission's finding that basement unit of five apartment building had

been sufficiently removed from market was supported by substantial evidence and was not arbitrary or capricious and, thus, landlord was entitled to claim exemption from rent stabilization under "small landlord" provision of Rental Housing Act which excludes from coverage any rental unit in any housing accommodation of four or fewer units; basement unit had not been occupied for almost four years when tenant filed his petition claiming that landlord was not entitled to claim "small landlord" exemption and was thus not vacant or temporarily withdrawn from the market. D.C. Code 1981, § 45-2501 et seq.; § 45-1516(a)(3) (repealed). *Goodman v. District of Columbia Rental Housing Com.*, 573 A.2d 1293, 1990 D.C. App. LEXIS 96 (1990).

For the purposes of section of "Rental Housing Act" exempting from rent control "any rental unit in any housing accommodation of 4 or fewer units," the term "unit" and "rental unit" have the same meaning. D.C. Code 1981, § 45-1516(a)(3) (repealed). *Blacknall v. District of Columbia Rental Housing Com.*, 544 A.2d 710, 1988 D.C. App. LEXIS 124 (1988).

For purposes of the exemption from rent control of "any rental unit in any housing accommodation of 4 or fewer units," when a rental unit has been permanently removed from the market as a rental unit, it does not count in calculation of four units. D.C. Code 1981, §§ 45-1503(8, 27), 45-1516(a)(3) (repealed). *Blacknall v. District of Columbia Rental Housing Com.*, 544 A.2d 710, 1988 D.C. App. LEXIS 124 (1988).

Property, containing four rental units and one office which had been permanently removed from the rental market, came within small landlord exemption from rent control. D.C. Code 1981, § 45-1516(a)(3) (repealed). *Blacknall v. District of Columbia Rental Housing Com.*, 544 A.2d 710, 1988 D.C. App. LEXIS 124 (1988).

Finding that landlord had more than four residential tenants in her two rental buildings, so as not to be entitled to the small landlord exemption from rent control, was supported by substantial evidence. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

That residential tenant's lease may have been labeled "commercial" was, at best, irrelevant to landlord's claim of small landlord exemption from rent control laws and, at worst, was evidence of willful intention to circumvent the rental housing laws. D.C. Code 1981, §§ 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Relative who pays “rent” in some form would occupy unit that is “offered for rent” and thus not excludable in determining landlord’s entitlement to small landlord exemption from rent control, while if landlord provides free rental unit in order to assist a relative in need rather than as an attempt to circumvent rental housing laws, unit would presumably be excluded from aggregate number; cornerstone of landlord’s claim for exclusion of such a unit is good faith. D.C. Code 1981, §§ 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Where there was no requirement in effect under agency’s regulations that changed certificate of occupancy was required in connection with landlord’s claim of exemption statement to prove permanent removal of rental unit from market, so as to establish entitlement to small landlord exemption from rent control, it was erroneous as a matter of law to elevate such a certificate from a form of proof to a substantive precondition for exemption. D.C. Code 1981, § 45-2515(a)(3)(C); §§ 45-1516(a)(3)(C), 45-1561(i)(1)(F) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

§ 42-3502.06. Rent ceilings abolished.

(a) Rent ceilings are abolished, except that the housing provider may implement, in accordance with § 42-3502.08(g), rent ceiling adjustments pursuant to petitions and voluntary agreements approved by the Rent Administrator prior to August 5, 2006. Petitions and voluntary agreements pending as of August 5, 2006, shall be decided pursuant to the provisions of this subchapter in effect prior to August 5, 2006, and may be implemented in accordance with § 42-3502.08(g). In considering a hardship petition pursuant to § 42-3502.12, any unimplemented rent charged increase pursuant to a petition or voluntary agreement approved by the Rent Administrator shall be included in the maximum possible rental income. Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. No tenant may sublet a rental unit at a rent greater than that tenant pays the housing provider.

(b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent charged established by subsection (a) of this section. This adjustment of general applicability shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent charged for that unit.

(c) At the housing provider’s election, instead of any adjustment authorized by subsection (b) of this section, the rent charged for an accommodation may be adjusted through a hardship petition under § 42-3502.12. Such a petition shall be clearly identified as an election instead of the general adjustments autho-

rized by subsection (b) of this section. The Rent Administrator shall accord an expedited review process for these petitions and shall issue and publish a final decision within 90 days after the petition has been filed. In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator at the end of 90 days from the date of filing of the petition and as to which the housing provider is not in default in complying with any information request made under § 42-3502.16, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider at the end of the 90-day period. The conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, the Rent Administrator shall, by order served upon the parties at least 10 days prior to the expiration of the 90 days, make a provisional finding as to the rent charged adjustment justified by the order, if any. Except to the extent modified by this section, the adjustment procedures of § 42-3502.16 shall apply to any adjustment.

(d) If on July 17, 1985 the rent being charged exceeds the allowable rent ceiling, that rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due. This subsection shall not apply to any rent administratively approved under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980, or any rent increase authorized by a court of competent jurisdiction. The housing provider shall notify the tenant in writing of any decrease required under this chapter before the effective date of the decrease.

(e) A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 42-3501.03(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

(f)(1) Unless permitted under § 42-3502.10(j), a capital improvement increase in the rent charged as provided under § 42-3502.10 shall not be assessed against any elderly tenant or tenant with a disability who leases and occupies a rental unit regulated under this chapter.

(2) For the purposes of this section and § 42-3502.10, the term:

(A) "Tenant with a disability" means a person who has:

(i) A disability, as defined in section 3(2)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(2)(A)) and 29 C.F.R. § 1630.2(g)(1); and

(ii) An income of not more than \$40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to 42-3502.10.

(B) "Elderly tenant" means an individual who is, and who proves to the satisfaction of the Rent Administrator that he or she is, at least 62 years of age, and has an income of not more than \$40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to § 42-3502.10.

(2A)(A) In making a determination that a tenant qualifies as a tenant with a disability under this subsection, the Mayor shall limit the inquiry to the minimum information and documentation necessary to establish that the tenant meets the definition of a person with a disability and shall not inquire further into the nature or severity of the disability. The Mayor shall not require the tenant to provide a description of the disability when making an eligibility determination; provided, that the Mayor shall require that a physician or other licensed healthcare professional verify that a tenant meets the definition of a person with a disability. The Mayor shall not require the tenant to provide eligibility documentation in less than 30 days.

(B) The Mayor shall maintain records of the information compiled under this paragraph; provided, that the Mayor shall not disclose information about a tenant's disability unless the disclosure is required by law.

(C) The Mayor shall develop such forms and procedures as may be necessary to verify eligibility under this subsection.

(3) Paragraphs (1) and (2) of this subsection shall not affect any increase in the rent charged for any rental unit regulated under this chapter.

(g)(1) Any housing provider who provides housing to an elderly or disabled tenant and is not permitted under § 42-3502.10 to implement, and does not implement, all or any portion of any increase in rent charged based on capital improvements provided under § 42-3502.10 shall receive a tax credit for each unit occupied by an elderly tenant, as determined by the Rent Administrator under § 42-3502.10, in the amount of \$1 for each \$1 of the capital improvement rent increase granted by the Rent Administrator that is not implemented. The credit shall be taken against the next installment or installments of real property taxes payable to the District of Columbia coming due with respect to the housing accommodation, inclusive of the land on which it is located.

(2) If an elderly or disabled tenant exempted from capital improvement rent increases pursuant to this chapter should cease to reside in a rental unit, the tax credit allowed to the housing provider for that rental unit shall also cease. If another eligible elderly or disabled tenant becomes a resident of the same rental unit, the housing provider shall provide the exemption to the new tenant, and the tax credit shall continue to be effective.

(July 17, 1985, D.C. Law 6-10, § 206, 32 DCR 3089; Sept. 26, 1992, D.C. Law 9-154, § 2(a), 39 DCR 5673; Aug. 5, 2006, D.C. Law 16-145, § 2(a), (c), 53 DCR 4889; Mar. 8, 2007, D.C. Law 16-240, § 3, 54 DCR 597; Mar. 14, 2007, D.C. Law 16-294, § 3, 54 DCR 1086; Apr. 24, 2007, D.C. Law 16-305, § 67(a), 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-353, §§ 184(c), 253, 56 DCR 1117.)

Cross references. — Fee for housing accommodation conversion, rights to reduction, see § 42-3402.04.

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.02, 42-3502.05, 42-3502.08, 42-3502.09, 42-3502.10, 42-3502.12, 42-3502.16, and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2516.

Effect of amendments. — D.C. Law 16-145, in subsec. (a), inserted the first three sentences; and, in subsecs. (b), (c), and (f)(3), substituted "rent charged" for "rent ceiling".

D.C. Law 16-240 rewrote subsec. (f)(2)(A) and added subsec. (f)(2)(2A). Prior to amendment, subsec. (f)(2)(A) read as follows: "(A) 'Disabled tenant' means an individual who has a medically determinable physical impairment, in-

cluding blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation, and has an income of not more than \$40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to § 42-3502.10."

D.C. Law 16-294, in subsec. (a), made a technical correction that made no change in text.

D.C. Law 16-305, in subsec. (f)(1), substituted "tenant or tenant with a disability" for "or disabled tenant"; and, in subsec. (f)(2), purported to substitute "Tenant with a disability" for "Disabled tenant".

D.C. Law 17-353, in the section heading, substituted "Rent ceilings abolished" for "Rent ceiling", and validated a previously made technical correction in subsec. (a).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a), (c) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

For temporary (90 day) repeal of section, see § 2(d) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 9-154. — Law 9-154, the "Rental Housing Act of 1985 Elderly and Disabled Tenant Rental Housing Capital Improvement Relief Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-74, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-246 and transmitted to both Houses of Congress for review. D.C. Law 9-154 became effective on September 26, 1992.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 16-240. — For Law 16-240, see notes following § 42-3402.08.

Legislative history of Law 16-294. — For Law 16-294, see notes following § 42-1103.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

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Base rent level.

In view of fact that rent of a unit may not be increased above base rent unless unit is properly registered, and that almost full amount of rent overcharge award to tenant accrued prior to landlord's registration, Rental Housing Commission properly determined that rent ceiling for unit was equal to base rent. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission properly set rent ceilings of all units in landlord's building

as of registration at base rent level, notwithstanding landlord's contention that such decision led to permanent loss of all cost of living increases in ten-year period preceding time when landlord properly registered building. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Conveyances.

Tenant's claim that premises were fraudulently conveyed by landlord's father in effort to evade rent ceiling limitation was not required to file a plea of title since she was not claiming title in herself or in another under whom she claimed. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Tenant whose rent was raised when landlord's father transferred premises to his son and landlord then obtained rent ceiling exemption was not protected by fraudulent conveyance statute, although tenant contended that building was transferred in effort to evade rent ceiling limitation. D.C. Code 1980 Supp. § 45-1681 et seq.; D.C. Code 1984, § 28-3101. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Expenses.

In landlord's action to recover certain pass-through expenses, it was not plain error for

trial court to refuse to take judicial notice of consumer price index (CPI) specified by lease for years in question, where landlord did not ask court to take judicial notice of that fact until oral argument on motion to dismiss. *Bender v. Williams*, 848 A.2d 590, 2004 D.C. App. LEXIS 199 (2004).

Proposed regulation of Rental Housing Commission that any expense "that was accrued or paid outside of the twelve (12) month period" shall be excluded from consideration in setting rent ceilings, when read with proposed regulation allowing landlord option of cash basis or accrual accounting methods, requires exclusion of expenses accrued outside reporting period for landlord who uses accrual method and exclusion of expenses paid outside reporting period for landlord who uses cash basis method. D.C. Code 1981, § 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Prepaid payroll and insurance expenditures, which covered 12-month periods and were paid within reporting period, of landlord, who elected to use cash basis method of accounting, were improperly disallowed from landlord's hardship petition for upward adjustment of rent ceilings on ground that expenditures did not benefit reporting period. D.C. Code 1981, § 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Proposed regulation of rental housing commission that landlord's reported expenses on hardship petition for upward adjustment of rent ceilings not exceed expenses for more than 12-month period does not require that expenses reported be for same 12-month period as reporting period, which requirement would be inconsistent with purpose of statute which governs calculations of landlord's return on equity. D.C. Code 1981, § 45-1523. *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

On landlord's hardship petition for upward adjustment of rent ceilings, expenditures for new boiler, refrigerators, ranges, sinks and cabinets installed during reporting period were properly treated as capital expenditures, which were required to be amortized over their useful life, rather than operating expenses. D.C. Code 1981, § 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

In general.

Under rent control laws, a rent ceiling operates as an upper bound on the amount of rent that a housing provider is allowed to charge a tenant. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C.*

Rental Hous. Comm'n, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Under the rent control laws, the principal protections for tenants are the imposition of a rent ceiling and the prohibition against upward adjustment of that ceiling except on specifically enumerated grounds. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Rent administrator was not compelled to render decision and order within 120 days, as prescribed by D.C. Code 1980 Supp. § 45-1695(a), which provides for administrative review of certain rental adjustments, because tenant's complaint, that current rent charged was in excess of prevailing rent ceiling, was not filed pursuant to any of the four causes of action to which the statute exclusively applies. *Harris v. District of Columbia Rental Housing Com.*, 505 A.2d 66, 1986 D.C. App. LEXIS 293 (1986).

Landlord was not entitled to equitable relief from alleged prejudice caused by rent administrator's delay of 19 months in rendering its decision assessing treble damages against landlord for rental overcharges where landlord never complained of pace of proceedings or sought court order expediting proceedings. D.C. Code 1981, § 1-1510(a)(2). *Harris v. District of Columbia Rental Housing Com.*, 505 A.2d 66, 1986 D.C. App. LEXIS 293 (1986).

Rental Housing Commission did not abuse its discretion in awarding treble damages on basis that landlord exceeded maximum allowable rent ceiling. D.C. Code 1981, § 45-1591(a). *Yasuna v. District of Columbia Rental Housing Com.*, 504 A.2d 605, 1986 D.C. App. LEXIS 291 (1986).

Where tenants assert in their pleadings to a possessory action brought against them by a landlord that a rent increase is invalid, but have not challenged it before the rent administrator, the superior court may, in the exercise of its discretion, accord them a reasonable time to file such a challenge; if no such challenge has been brought before rent administrator by time set for trial, the superior court is not to undertake to adjudicate validity of rent increase. *Drayton v. Poretzky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Jurisdiction of Rental Housing Commission.

Low-income housing provider waived for appellate review issue of whether rent control regulation and statute conflicted on question of whether provider was legally obligated to timely file certificate of election lest forfeit right to raise rent ceiling as adjustment of general applicability, where provider failed to raise issue at administrative level, at hearing before Rental Housing Commission (RHC). *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous.*

Comm'n, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Tenant's claims that landlord was not properly registered with Rental Accommodations and Conversion Division (RACD) and that rent increases were subject to requirements of rent control law could only be reviewed in the Court of Appeals after being first litigated before the Rental Housing Commission (RHC). D.C. Code 1981, § 1-1510(a). *Mack v. Zalco Realty*, 630 A.2d 1136, 1993 D.C. App. LEXIS 222 (1993).

Whether "base rent" for unit in building which was not timely registered, which was prerequisite to implementing rent increases, was rent charged in year later than year specified in Rental Housing Act, because landlord's occupancy of one of five units entitled him to a period of exemption under the small landlord exemption, was issue to be resolved in first instance by Rental Housing Commission. D.C. Code 1981, §§ 45-1503(2), 45-1516(a)(3), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission had primary jurisdiction over validity of rent ceiling and tenant was not collaterally estopped from obtaining adjudication before the rental accommodations office by the superior court's assumption in an action for possession that the amount charged for the unit was proper. D.C. Code 1981, § 45-1515. *Yasuna v. District of Columbia Rental Housing Com.*, 504 A.2d 605, 1986 D.C. App. LEXIS 291 (1986).

Lease provisions.

Landlord's rental agent did not violate statute, prohibiting adjustment of rent during the term of a written lease, by raising tenant's rent in accord with District of Columbia Housing Commission-authorized general cost-of-living increase in rent ceilings during term of written lease, where lease specifically provided that tenant agreed to pay as additional rent during term of lease such additional sums as landlord was permitted to charge under any applicable legislation. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

District of Columbia Rental Housing Commission's interpretation of statute, prohibiting rent adjustment during the term of a written lease, as prohibiting a landlord from enforcing a written lease clause that purported to permit landlord to raise rent during term of written lease agreement was inconsistent with statute's language; therefore, the Commission's interpretation was not controlling. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

Lease term explicitly permitting midterm rent increase in conformity with District of Columbia Rental Housing Commission-authorized increase in rent ceilings did not evince unconscionability, even assuming disparity in bargaining power. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

Presumptions and burden of proof.

Record supported finding that landlord had not proven with reasonable certainty outstanding pass-throughs for annual cost of living increases, as provided in lease; landlord's accountant testified that he calculated increases using consumer price index (CPI) furnished by landlord, and landlord testified merely that he "got the CPI increases from the Department of Labor." *Bender v. Williams*, 848 A.2d 590, 2004 D.C. App. LEXIS 199 (2004).

In landlord's action to recover certain pass-through expenses, landlord failed to prove with reasonable certainty the meaning of the term "the current fiscal year," which leases specified as the base year on which to calculate subsequent pass-throughs of real estate tax increases; landlord was free to offer proof of custom or practice demonstrating meaning of "fiscal year" but failed to do so. *Bender v. Williams*, 848 A.2d 590, 2004 D.C. App. LEXIS 199 (2004).

Remand.

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rent ceiling exemptions.

If initial rent increase pursuant to landlord's hardship petition is improper (or is rescinded or nullified) and later increase builds upon the first, amount of second increase must be recalculated. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Landlord's father who transferred his interest in apartment building to son but who remained obligated on promissory note secured by first deed of trust on property and who continued to manage the rental units was not

the "owner" of the premises under rent control statute for purposes of determining whether landlord could apply for exemption from rent ceiling limitations, despite contention that premises was conveyed to evade rent control. D.C. Code 1980 Supp. § 45-1686; D.C. Code 1984, § 45-1516. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Landlord, as potential heir of his father who owned other apartments in District of Columbia, did not have indirect interest in other District of Columbia rental property such that his building did not qualify for rental ceiling exemption. D.C. Code 1980 Supp. § 45-1686; D.C. Code 1984, § 45-1516. *Gibson v. Johnson*, 492 A.2d 574, 1985 D.C. App. LEXIS 305 (1985).

Rent ceiling increase.

Low-income housing provider forfeited its right to rent ceiling adjustments by failing to perfect them by timely filing with rent administrator and affected tenants a certificate of election of vacancy rent ceiling adjustment; after first vacancy, provider did not file to take an adjustment until approximately five months later, well beyond 30-day time limit, and with respect to second vacancy, provider did not file for adjustment until almost two months later, and thus, neither vacancy could support a subsequent rent increase, absent properly perfected adjustment. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Under rent control laws, the adjustment of general applicability allows housing providers the option to increase rent ceilings annually in order to keep up with inflation. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

When landlord withdrew hardship petition for rent ceiling increase while petition was pending before rent administrator on remand, rent ceiling increase authorized with regard to that petition was a nullity. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

When landlord withdrew hardship petition for rent ceiling increase, but then increased tenants' rent as if 17% increase it had obtained with regard to that petition remained valid, rent ceiling under another hardship petition had to be determined anew. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Tenants, in appeal from granting of landlord's hardship petition for rent ceiling increase, could challenge rent increases obtained

under prior hardship petition that ultimately was withdrawn by landlord, since landlord was no longer entitled to increase granted with regard to prior petition following landlord's withdrawal of that petition. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Tenants were collaterally estopped from challenging validity of landlord's certificate of occupancy, in action to invalidate rent ceiling increases, where tenants failed to object to same when landlord filed initial hardship petitions; orders granting rent ceiling increases due to hardship were "final" judgments, for estoppel purposes, even though they had been appealed. *Tenants of Minnesota Gardens, Inc. v. District of Columbia Rental Housing Com.*, 570 A.2d 1194, 1990 D.C. App. LEXIS 43 (1990).

Tenants seeking to invalidate rent ceiling increases waived their right to challenge landlord's certificate of authority due to business in District of Columbia by failing to raise issue in response to landlord's original rent ceiling increase petitions; there was no evidence that landlord had intentionally withheld lapse of its certificate of authority, or that tenants' failure to discover lapsed certificate was not result of their own negligence. *Tenants of Minnesota Gardens, Inc. v. District of Columbia Rental Housing Com.*, 570 A.2d 1194, 1990 D.C. App. LEXIS 43 (1990).

Statute prohibiting implementation of rent adjustment until 180 days have elapsed since any prior adjustment prohibits more than one increase in actual rent charged within 180-day period, but does not preclude single rent increase based on two separate permissible upward adjustments of rent ceiling; thus, landlord could properly impose single increase in rent ceiling which reflected more than one authorized adjustment. D.C. Code 1981, § 45-2518(g). *Winchester Van Buren Tenants Asso. v. District of Columbia Rental Housing Com.*, 550 A.2d 51, 1988 D.C. App. LEXIS 204 (1988).

Rent administrator's order upon hardship petition which raised rent ceiling for prior landlord upon certification of compliance with housing regulations raised present landlord's rent ceiling, even though certification had never been made; thus, rent charged was below ceiling. D.C. Code 1980 Supp. §§ 45-1687(a), 45-1693. *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

Where landlord elects to seek rent adjustment through hardship petition, landlord bears burden of proof. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

It is function of rent administrator as fact finder to evaluate evidence and determine whether it is sufficient to support landlord's petition for upward adjustment of rent ceilings. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Landlord was not entitled to remand of hardship petition for upward adjustment of rent ceilings to permit reconsideration of claim for management fees for which it failed to provide sufficient documentation at hearing before rent administrator. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Regulations which govern landlords' hardship petitions for upward adjustment of rent ceilings give notice of heavy burden of proof placed on landlords to provide adequate documentation to support their petitions. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Finding that landlord failed to provide verification of claimed lost income from uncollected rents was unsupported by documentation which landlord made available to rent administrator at hearing on landlord's hardship petition for upward adjustment of rent ceilings. D.C. Code 1981, § 1-1510(a)(3)(E). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

On landlord's hardship petition for upward adjustment of rent ceilings, landlord, who operated under cash basis method of accounting, was not entitled to estimate unbilled water and sewer service charges which it had not paid, regardless of when expenses were incurred. *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Rent increase.

Tenant was entitled to challenge a rent increase, even though her rental overcharge claim was filed outside of the three-year limitations period, where a subsequent rent adjustment petition was filed by the property manager during the limitations period and the manager had acknowledged both the correct lawful rent ceiling and the possibility of the tenant overcharge in a notice it sent to tenant and in the certificate of election of adjustment of general applicability that it filed with the Rental Accommodations and Conversion Division (RACD). *Majerle Mgmt. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

Statute of limitations for tenants' challenges to rent increases barred any investigation of validity of rent levels, or of adjustments in either rent levels or rent ceilings, in place more than three years prior to date of filing of tenant petition. D.C. Code 1981, § 45-2516(e). *Kennedy v. District of Columbia Rental Hous. Comm'n*, 709 A.2d 94, 1998 D.C. App. LEXIS 61 (1998).

Where landlord attempted to comply with rent administrator's conditions for granting landlord's "hardship petition" and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord's action for possession based on the conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

In landlord's action for possession based on tenant's failure to pay increased rent, evidence that landlord did not comply, until September 4, 1981, with rent administrator's condition for increased rent that landlord remedy existing housing code violations and that the Rental Housing Commission receive notification from the Department of Housing and Community Development that the violations had been abated, was sufficient to support finding that landlord was not entitled to rent increase until November 1, 1981, following the required 30-day notice after full compliance with the rent administrator's decision. D.C. Code 1981, § 45-1519(b); D.C. Code 1980 Supp. §§ 45-1689, 45-1689(b)(1). *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Even though previous rent landlord charged tenant had not been at rent ceiling under rent control rules of District of Columbia Rental Accommodations Commission at time of rent increase to compensate for increased operating costs, where specific prerequisites to such one-time rent increase set forth in rules did not contain requirement that existing rent be at rent ceiling before rent was increased, trial court did not err in validating rent increase, despite general regulation that existing rent would be required to be at rent ceiling before a rent increase could be implemented, for purpose of calculating amount required of tenants in order to exercise equitable right of redemption. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Where tenants resided in building containing only 20 units, landlord was entitled to fuel pass-through rent increase of 7% under District of Columbia Rental Accommodations Commission rules implementing the Emergency Heating Oil Rent Adjustment Act of 1979, which

authorized such an increase for housing accommodations with 100 or fewer units, even though landlord's entire apartment complex had 110 units. D.C. Code 1981, § 45-1501 et seq. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Where tenants asserting illegality of rent increases in their pleadings in response to landlord's possessory action did not seek review of either of the two challenged rent increases before the rent administrator, lower court should not have undertaken to determine the validity of the rent increases. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Rollbacks.

"Rollback" of rent, as sanction for housing violations, does not affect rent ceiling in that "rollback" lowers rent paid whereas reduction in "rent ceiling" reduces maximum which landlord may charge. D.C. Code 1980 Supp. §§ 45-1687(a), 45-1689(a)(2). *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

Finding of rent administrator that landlord violated housing regulations without finding that there was substantial decrease in services warranted only rollback in rent charged rather than rent ceiling reduction under statute [D.C. Code 1980 Supp. § 45-1692] which authorizes reduction in rent ceiling upon substantial reduction in services; thus, rent ceiling was never validly lowered so as to trigger landlord's liability for receipt of excess rent and treble damages. D.C. Code 1980 Supp. § 45-1699.24(a). *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

Sublessors.

Sublessor was statutorily prohibited from charging subtenants more rent than she paid to

her landlord even if she paid utility and repair expenses associated with rental units; sublessor could not bear those expenses and pass them on to subtenants in form of rent. D.C. Code 1981, §§ 45-2516(a), 45-2503(28). *Slaby v. District of Columbia Rental Hous. Comm'n*, 685 A.2d 1166, 1996 D.C. App. LEXIS 262 (1996), writ of certiorari denied by 520 U.S. 1190, 117 S. Ct. 1478, 137 L. Ed. 2d 690, 1997 U.S. LEXIS 2612, 65 U.S.L.W. 3712 (1997).

Sufficiency of evidence.

Findings that landlord was charging excessive rent and unlawfully reducing related services which were formerly included in rent were sufficiently supported by evidence which included tenant's lease and utility bills. *Harris v. District of Columbia Rental Housing Com.*, 505 A.2d 66, 1986 D.C. App. LEXIS 293 (1986).

Substantial evidence supported finding of the Rent Administrator that reduced rent charged after tenants were required to take over cost of their own electric service was in excess of applicable rent ceilings, warranting refund and treble damages. D.C. Code 1973 Supp. § 45-1699.24(a)(1). *Delwin Realty Co. v. District of Columbia Housing Com.*, 458 A.2d 58, 1983 D.C. App. LEXIS 342 (1983).

Voluntary adjustment by tenants.

Tenant whose lease was still in effect when fire broke out and who was not alleged to have caused or occasioned fire continued as "tenant" for purposes of determining number of tenants needed to voluntarily agree to adjustment of rent ceiling; therefore, in view of fact that tenant's inclusion meant that only 60% rather than 70% of tenants had signed agreement, agreement was properly invalidated. D.C. Code 1981, § 1-1510(a)(3)(A); § 45-1561(f) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

§ 42-3502.07. Adjustments in rent ceiling [Repealed].

Repealed.

(July 17, 1985, D.C. Law 6-10, § 207, 32 DCR 3089; Aug. 5, 2006, D.C. Law 16-145, § 2(d), 53 DCR 4889.)

Prior Codifications. — 1981 Ed., § 45-2517.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

§ 42-3502.08. Increases above base rent.

(a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

(A) The rental unit and the common elements are in substantial

compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures;

(B) The housing accommodation is registered in accordance with § 42-3502.05;

(C) The housing provider of the housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing;

(D) The manager of the accommodation, when other than the housing provider, is properly registered under the housing regulations if the regulations require registration; and

(E) Notice of the increase complies with § 42-3509.04.

(2) Where the Rent Administrator finds there have been excessive and prolonged violations of the housing regulations affecting the health, safety, and security of the tenants or the habitability of the housing accommodation in which the tenants reside and that the housing provider has failed to correct the violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the September 1, 1983, base rent for the rental units until the violations have been abated.

(b) A housing accommodation and each of the rental units in the housing accommodation shall be considered to be in substantial compliance with the housing regulations if:

(1) For purposes of the adjustments made in the rent charged in §§ 42-3502.06 and 42-3502.07 [repealed], all substantial violations cited at the time of the last inspection of the housing accommodation by the Department of Consumer and Regulatory Affairs before the effective date of the increase were abated within a 45-day period following the issuance of the citations or that time granted by the Department of Consumer and Regulatory Affairs, and the Department of Consumer and Regulatory Affairs has certified the abatement, or the housing provider or the tenant has certified the abatement and has presented evidence to substantiate the certification. No certification of abatement shall establish compliance with the housing regulations unless the tenants have been given a 10-day notice and an opportunity to contest the certification; and

(2) For purposes of the filing of petitions for adjustments in the rent charged as prescribed in § 42-3502.16, the housing accommodation and each of the rental units in the housing accommodation shall have been inspected at the request of each housing provider by the Department of Consumer and Regulatory Affairs within the 30 days immediately preceding the filing of a petition for adjustment.

(c) A tenant of a housing accommodation who, after receipt of not less than 5 days written notice that the housing provider desires an inspection of the tenant's rental unit for the purpose of determining whether the housing accommodation is in substantial compliance with the housing regulations,

refuses without good cause to admit an employee of the Department of Consumer and Regulatory Affairs for the purpose of inspecting the tenant's rental unit, or who refuses without good cause to admit the housing provider or the housing provider's employee or contractor for the purpose of abating any violation of the housing regulations cited by the Department of Consumer and Regulatory Affairs, will be considered to have waived the right to challenge the validity of the proposed adjustment for reasons that the rental unit occupied by the tenant is not in substantial compliance with the housing regulations.

(d) Nothing in this section shall be construed to limit or abrogate a tenant's right to initiate any lawful action to correct any violation in the tenant's rental unit or in the housing accommodation in which that rental unit is located.

(e) Notwithstanding any other provision of this chapter, no rent shall be adjusted under this chapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for the rental unit for the term of the written lease or rental agreement.

(f) Any notice of an adjustment under § 42-3502.06 shall contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase. The notice shall also include a summary of tenant rights under this chapter and a list of sources of technical assistance as published in the District of Columbia Register by the Mayor.

(g) The amount of rent charged for any rental unit subject to this subchapter shall not be increased until a full 12 months have elapsed since any prior increase; provided, that:

(1) An increase in the amount of rent charged shall not exceed the amount of any single adjustment pursuant to any one section of this subchapter;

(2) If the rental unit becomes vacant within 12 months of an increase in the amount of rent charged, other than a vacancy increase pursuant to § 42-3502.13, the housing provider may increase the amount of rent charged pursuant to § 42-3502.13; and

(3) If the amount of rent charged is increased pursuant to paragraph (2) of this subsection, the amount of rent charged shall not be increased until a full 12 months have elapsed after the increase in the amount of rent charged, even if another vacancy occurs.

(h)(1) Unless the increase in the amount of rent charged is implemented pursuant to § 42-3502.10, § 42-3502.11, § 42-3502.12, § 42-3502.14, or § 42-3502.15, an increase in the amount of rent charged while the unit is vacant shall not exceed the amount permitted under § 42-3502.13(a).

(2) Unless the increase in the amount of rent charged is implemented pursuant to § 42-3502.10, § 42-3502.11, § 42-3502.12, § 42-3502.14, or § 42-3502.15, an increase in the amount of rent charged while the unit is occupied shall not exceed, taken as a percentage of the current allowable amount of rent charged for the unit, 2% plus the adjustment of general applicability; provided, that the total increase shall not exceed 10%; provided further, that the amount of any such increase in the rent charged for a unit occupied by an elderly or disabled tenant without regard to income but otherwise as defined in § 42-3502.06(f) shall not exceed the lesser of 5% or the adjustment of general applicability.

(July 17, 1985, D.C. Law 6-10, § 208, 32 DCR 3089; Mar. 16, 1993, D.C. Law 9-191, § 2, 39 DCR 9005; Aug. 5, 2006, D.C. Law 16-145, § 2(a), (e), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.06, 42-3502.09, and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2518.

Effect of amendments. — D.C. Law 16-145 substituted “rent charged” for “rent ceiling”; and rewrote subsecs. (g) and (h).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a), (e) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 9-191. — Law 9-191, the “Unitary Rent Ceiling Adjustment Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-305, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-312 and transmitted to both Houses of Congress for its review. D.C. Law 9-191 became effective on March 16, 1993.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Compliance with conditions and requirements. In general.

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Standing.

Compliance with conditions and requirements.

Rental Housing Commission (RHC) had authority, under Court of Appeals’ rules, to dismiss tenant’s appeal from Rent Administrator’s decision regarding tenant’s challenge to rent increase, where tenant failed to comply with Commission’s order to pay the rent increase into an escrow account or provide a supersedeas bond. *Mullin v. D.C. Rental Hous. Comm’n*, 844 A.2d 1138, 2004 D.C. App. LEXIS 65 (2004), writ of certiorari denied by 543 U.S. 1006, 125 S. Ct. 615, 160 L. Ed. 2d 468, 2004 U.S. LEXIS 7782, 73 U.S.L.W. 3322 (2004).

Rental Housing Commission (RHC) had inherent authority to dismiss tenant’s appeal from Rent Administrator’s decision regarding tenant’s challenge to rent increase, where tenant failed to comply with Commission’s order to pay the rent increase into an escrow account or provide a supersedeas bond. *Mullin v. D.C. Rental Hous. Comm’n*, 844 A.2d 1138, 2004 D.C. App. LEXIS 65 (2004), writ of certiorari denied by 543 U.S. 1006, 125 S. Ct. 615, 160 L. Ed. 2d 468, 2004 U.S. LEXIS 7782, 73 U.S.L.W. 3322 (2004).

Jury question was presented as to whether landlord suing for rent had satisfied statutory

requirement for obtaining hardship increase in allowable rent, that it had substantially complied with housing code violations; tenant had testified that landlord had not abated preexisting housing code violations, which she had described in some detail, and landlord had offered evidence, including violation abatement cards, testimony by housing inspector, and his own testimony. D.C. Code 1981, §§ 45-2503(4), 45-2518(a)(1)(A), (b)(1), 45-2522. *McKenzie v. McCulloch*, 634 A.2d 430, 1993 D.C. App. LEXIS 300 (1993).

Where landlord attempted to comply with rent administrator’s conditions for granting landlord’s “hardship petition” and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord’s action for possession based on the conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

In landlord’s action for possession based on tenant’s failure to pay increased rent, evidence that landlord did not comply, until September 4, 1981, with rent administrator’s condition for increased rent that landlord remedy existing housing code violations and that the Rental Housing Commission receive notification from the Department of Housing and Community Development that the violations had been abated, was sufficient to support finding that landlord was not entitled to rent increase until November 1, 1981, following the required 30-

day notice after full compliance with the rent administrator's decision. D.C. Code 1981, § 45-1519(b); D.C. Code 1980 Supp. §§ 45-1689, 45-1689(b)(1). *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

In general.

Where first rent increase was improper and second increase builds upon first increase, amount of second increase is also improper, but that does not mean that rental increase could never be imposed, even if properly calculated. D.C. Code 1981, § 45-1501 et seq. *Kitchings v. District of Columbia Rental Housing Com.*, 588 A.2d 263, 1991 D.C. App. LEXIS 67 (1991).

Record was insufficient on appeal to show basis for determination by Rental Housing Commission that agreement by 70% of tenants to permit second rent increase was legally entered, thus requiring remand for consideration of claim by tenants that 70% agreement was invalid because first increase included in base rent used to make calculations was incorrect. D.C. Code 1981, § 45-1501 et seq. *Kitchings v. District of Columbia Rental Housing Com.*, 588 A.2d 263, 1991 D.C. App. LEXIS 67 (1991).

Statute prohibiting implementation of rent adjustment until 180 days have elapsed since any prior adjustment prohibits more than one increase in actual rent charged within 180-day period, but does not preclude single rent increase based on two separate permissible upward adjustments of rent ceiling; thus, landlord could properly impose single increase in rent ceiling which reflected more than one authorized adjustment. D.C. Code 1981, § 45-2518(g). *Winchester Van Buren Tenants Asso. v. District of Columbia Rental Housing Com.*, 550 A.2d 51, 1988 D.C. App. LEXIS 204 (1988).

Whether "base rent" for unit in building which was not timely registered, which was prerequisite to implementing rent increases, was rent charged in year later than year specified in Rental Housing Act, because landlord's occupancy of one of five units entitled him to a period of exemption under the small landlord exemption, was issue to be resolved in first instance by Rental Housing Commission. D.C. Code 1981, §§ 45-1503(2), 45-1516(a)(3), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Following a period of bad-faith claim of exemption from rent control, change in status from nonexempt to exempt will become effective only upon filing of a valid claim of exemption statement. D.C. Code 1981, § 45-2518(a)(1)(B); § 45-1519(a)(1)(B) (repealed); D.C. Code 1976 Supp., § 45-1642(a)(5). *Temple v. District of Columbia Rental Housing Com.*,

536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Lease provisions.

Statute prohibiting rent adjustments during the term of a written lease or rental agreement applies only where a valid written lease agreement establishes the rent for a rental unit for the term of the lease. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

Landlord's rental agent did not violate statute, prohibiting adjustment of rent during the term of a written lease, by raising tenant's rent in accord with District of Columbia Housing Commission-authorized general cost-of-living increase in rent ceilings during term of written lease, where lease specifically provided that tenant agreed to pay as additional rent during term of lease such additional sums as landlord was permitted to charge under any applicable legislation. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

District of Columbia Rental Housing Commission's interpretation of statute, prohibiting rent adjustment during the term of a written lease, as prohibiting a landlord from enforcing a written lease clause that purported to permit landlord to raise rent during term of written lease agreement was inconsistent with statute's language; therefore, the Commission's interpretation was not controlling. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

Lease term explicitly permitting midterm rent increase in conformity with District of Columbia Rental Housing Commission-authorized increase in rent ceilings did not evince unconscionability, even assuming disparity in bargaining power. D.C. Code 1981, § 45-1519(e). *Weaver Bros., Inc. v. District of Columbia Rental Housing Com.*, 473 A.2d 384, 1984 D.C. App. LEXIS 343 (1984).

Notice provisions.

Landlord's failure to give ten-day notification of self-certification of abatement of housing code violations did not invalidate subsequent rent increase taken by landlord absent showing by tenants that property was not in substantial compliance with housing code. D.C. Code 1981, §§ 45-1501 to 45-1597, 45-1519(b)(1) (repealed). *Nwankwo v. District of Columbia Rental Housing Com.*, 542 A.2d 827, 1988 D.C. App. LEXIS 86 (1988).

Rental Housing Commission had authority to depart from prior decision holding that viola-

tion of ten-day notification of self-certification of abatement of housing violations invalidated rent increase so long as it explained reason for such departure. D.C. Code 1981, §§ 45-1501 to 45-1597, 45-1519(b)(1) (repealed). *Nwankwo v. District of Columbia Rental Housing Com.*, 542 A.2d 827, 1988 D.C. App. LEXIS 86 (1988).

Registration.

Landowner's failure to register his building, which was prerequisite to implementing rent increases, was not excused, despite landlord's contention that his failure to comply with registration requirement arose out of governmental negligence which prevented him from securing certificate of occupancy, which was needed to register. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Landlord did not "constructively register" his building, which was prerequisite to implementing rent increases, by virtue of temporary registration number he was granted until he attained necessary final certificate of occupancy and housing business license. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission's award of trebled rent overcharges, due to landlord's failure to timely register his housing accommodation, was justified, despite landlord's contention that nonregistration constituted "technical" violation, that tenants had full use of property, that he attempted to comply with registration requirements, and that government error caused his nonregistration. D.C. Code 1981, § 45-1591(a) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rent ceilings.

Rent control regulation's 30-day deadline for perfecting rent ceiling adjustments of general applicability, requiring timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability lest face forfeiture of right to adjustment, was not affected by Rental Housing Commission's (RHC) reenactment of Unitary Rent Ceiling Adjustment Amendment Act, which allowed housing provider to delay implementation of any rent ceiling increase without forfeiture; RHC recognized that, under Unitary Act, there was no deadline for implementing a rent ceiling adjustment in a rent increase, but such analysis addressed implementation, and said nothing of perfection of ceiling adjustments. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Rent control regulation's 30-day deadline for perfecting rent ceiling adjustments of general applicability, requiring timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability lest face forfeiture of right to adjustment, was not superseded by Unitary Rent Ceiling Adjustment Amendment Act, which allowed housing provider to delay implementation of any rent ceiling increase without forfeiture; that Unitary Act allowed provider to delay implementing any rent ceiling adjustment in rent increase without forfeiting adjustment did not mean that provider was free to delay perfecting its entitlement to adjustment as well, and Unitary Act did not address requirements for perfection, as opposed to implementation, of rent ceiling adjustments. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

The reporting of rent ceiling adjustments through timely filings facilitates the administration of rent control, by enabling the Rent Administrator and affected tenants to ascertain the true applicable rent ceiling for any rental unit, determine whether any change in that rent ceiling is permitted and properly computed, and confirm that any rent increase is based on a rent ceiling adjustment that is authorized and available for implementation. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Under rent control laws, where the rent ceiling exceeds the rent charged by the sum of multiple unimplemented adjustments, a provider will not be able to raise the rent all the way to the rent ceiling in one fell swoop. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Tenants were collaterally estopped from challenging validity of landlord's certificate of occupancy, in action to invalidate rent ceiling increases, where tenants failed to object to same when landlord filed initial hardship petitions; orders granting rent ceiling increases due to hardship were "final" judgments, for estoppel purposes, even though they had been appealed. *Tenants of Minnesota Gardens, Inc. v. District of Columbia Rental Housing Com.*, 570 A.2d 1194, 1990 D.C. App. LEXIS 43 (1990).

Tenants seeking to invalidate rent ceiling increases waived their right to challenge landlord's certificate of authority due to business in District of Columbia by failing to raise issue in response to landlord's original rent ceiling increase petitions; there was no evidence that landlord had intentionally withheld lapse of its certificate of authority, or that tenants' failure to discover lapsed certificate was not result of their own negligence. *Tenants of Minnesota Gardens, Inc. v. District of Columbia Rental*

Housing Com., 570 A.2d 1194, 1990 D.C. App. LEXIS 43 (1990).

In view of fact that rent of a unit may not be increased above base rent unless unit is properly registered, and that almost full amount of rent overcharge award to tenant accrued prior to landlord's registration, Rental Housing Commission properly determined that rent ceiling for unit was equal to base rent. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission properly set rent ceilings of all units in landlord's building as of registration at base rent level, notwithstanding landlord's contention that such decision led to permanent loss of all cost of living increases in ten-year period preceding time when landlord properly registered building. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

In view of fact that landlord was discouraged in attempts to have rent ceilings established for

units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Standing.

Tenant who was not party in administrative proceeding and did not seek petition to intervene in Court of Appeals lacked standing to petition for review of decision of District of Columbia Rental Housing Commission to refuse to invalidate rent increase taken by landlord. *Nwankwo v. District of Columbia Rental Housing Com.*, 542 A.2d 827, 1988 D.C. App. LEXIS 86 (1988).

§ 42-3502.09. Rent charged upon termination of exemption and for newly covered rental units.

(a) Except as provided in subsection (c) of this section, the rent charged for any rental unit in a housing accommodation exempted by § 42-3502.05, except subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption, increased by no more than 5% of the average rent charged during the last 6 consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in §§ 42-3502.08 and 42-3509.04.

(b) A structure or building, including the land appurtenant, which is located in the District in which 1 or more rental units as defined in § 42-3501.03(33) are established after July 17, 1985, shall subsequently be defined as a "housing accommodation" for the purposes of this chapter. If any rental unit in such a housing accommodation is not otherwise exempted by 1 of the provisions of § 42-3502.05, the rent charged for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the housing provider and is considered to be the equivalent of making the computations specified in § 42-3502.06.

(c) The rent charged for any rental unit exempted under § 42-3502.05(a)(5) upon the expiration or termination of the exemption shall be the rent charged on the date the unit became exempt plus each subsequent adjustment of general applicability authorized under § 42-3502.06(b).

(July 17, 1985, D.C. Law 6-10, § 209, 32 DCR 3089; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889; Mar. 25, 2009, D.C. Law 17-353, § 184(d), 56 DCR 1117.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2519.

Effect of amendments. — D.C. Law 16-145 substituted “rent charged” for “rent ceiling”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment

Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Base rent.
In general.

Base rent.

In view of fact that rent of a unit may not be increased above base rent unless unit is properly registered, and that almost full amount of rent overcharge award to tenant accrued prior to landlord's registration, Rental Housing Commission properly determined that rent ceiling for unit was equal to base rent. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission properly set rent ceilings of all units in landlord's building as of registration at base rent level, notwithstanding landlord's contention that such decision led to permanent loss of all cost of living increases in ten-year period preceding time when landlord properly registered building. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

In general.

Whether “base rent” for unit in building

which was not timely registered, which was prerequisite to implementing rent increases, was rent charged in year later than year specified in Rental Housing Act, because landlord's occupancy of one of five units entitled him to a period of exemption under the small landlord exemption, was issue to be resolved in first instance by Rental Housing Commission. D.C. Code 1981, §§ 45-1503(2), 45-1516(a)(3), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

§ 42-3502.10. Petitions for capital improvements.

(a) On petition by the housing provider, the Rent Administrator may approve a rent adjustment to cover the cost of capital improvements to a rental unit or housing accommodation if:

(1) The improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation; or

(2) The improvement will effect a net saving in the use of energy by the housing accommodation, or is intended to comply with applicable environmental protection regulations, if any savings in energy costs are passed on to the tenants.

(b) The housing provider shall establish to the satisfaction of the Rent Administrator:

(1) That the improvement would be considered depreciable under the Internal Revenue Code (26 U.S.C.);

(2) The amount and cost of the improvement including interest and service charges; and

(3) That required governmental permits and approvals have been secured.

(c) Any decision of the Rent Administrator under this section shall determine the adjustment of the rent charged:

(1) In the case of building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation. No increase under this paragraph may exceed 20% above the current rent charged;

(2) In the case of limited improvements to 1 or more rental units in a housing accommodation, by dividing the cost over a 64-month period of amortization and by dividing this result by the number of rental units receiving the improvement. No increase under this paragraph may exceed 15% above the current rent charged. The Rent Administrator shall make a determination that the interests of the affected tenants are being protected; and

(3) In the case of a rent increase included as part of the rent charged or base rent for a capital improvement after October 19, 1989, the rent increase is temporary and is abated as to each tenant upon recovery of all costs of the capital improvement, including interest and service charges. The rent increase shall not be calculated as part of either the base rent or rent charged of a tenant when determining the amount of rent charged. When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charged to reflect the abatement of the capital improvement rent increase.

(d) Plans, contracts, specifications, and permits relating to capital improvements shall be retained for 1 year by the housing provider or its designated agent for inspection by affected tenants as the tenants may request at the housing provider's place of business in the District during working hours. If the housing provider does not have a place of business in the District, the plans, contracts, specifications, and permits relating to the capital improvements shall be made available upon request by the affected tenants at the Rental Accommodations Division.

(e)(1) A decision by the Rent Administrator on a rent adjustment under this section shall be rendered within 60 days after receipt of a complete petition for capital improvement.

(2) Failure of the Rent Administrator to render a decision pursuant to this section within the 60-day period shall operate to allow the petitioner to proceed with a capital improvement.

(f) Any tenant displaced from a rental unit by the capital improvement of the unit or the housing accommodation under this section shall have a right to rerent the rental unit immediately upon the completion of the work.

(g) The housing provider may make capital improvements to the property before the approval of the rent adjustment by the Rent Administrator for the

capital improvements where the capital improvements are immediately necessary to maintain the health or safety of the tenants.

(h) A housing provider may adjust the rent charged for any rental unit to provide for the cost of any capital improvements which are required by provisions of any federal or local statute or regulation becoming effective after October 30, 1980, amortized over the useful life of the improvements, and the cost of the improvements applied on an equal basis to those rental units within the housing accommodation which benefit from the improvement, by filing with the Division a certificate of calculation for mandated capital improvement increase. The certificate shall establish:

(1) That the improvement is required by the provisions of a federal or District statute or regulation becoming effective after October 30, 1980;

(2) The amount of the cost of the improvements; and

(3) That required governmental permits and approvals have been secured.

(i) The housing provider may petition the Rent Administrator for approval of the rent adjustment for any capital improvements made under subsection (g) of this section, if the petition is filed with the Rent Administrator within 10 calendar days from the installation of the capital improvements.

(j) The housing provider may petition the Rent Administrator to assess capital improvement increases in the rent charged against elderly tenants and tenants with disabilities, and the Rent Administrator shall approve the petition if the housing provider proves to the satisfaction of the Rent Administrator that the amount which would be collectible from elderly tenants and tenants with disabilities at the housing accommodation, but for the provisions of § 42-3502.06(f), would exceed the amount of real property taxes that would be payable during the calendar year with respect to the housing accommodation, but for the provisions of § 42-3502.06(g).

(July 17, 1985, D.C. Law 6-10, § 210, 32 DCR 3089; Oct. 19, 1989, D.C. Law 8-48, § 2, 36 DCR 5788; Sept. 26, 1992, D.C. Law 9-154, § 2(b), 39 DCR 5673; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889; Apr. 24, 2007, D.C. Law 16-305, § 67(b), 53 DCR 6198)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.06, 42-3502.08, 42-3502.16, and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2520.

Effect of amendments. — D.C. Law 16-145, in subssecs. (c) and (h), substituted “rent charged” for “rent ceiling”.

D.C. Law 16-305, in subsec. (j), substituted “tenants or tenants with a disability” for “and disabled tenants”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Legislative history of Law 8-48. — Law 8-48, the “Rental Housing Act of 1985 Capital Improvements Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-106, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-154. — For legislative history of D.C. Law 9-154, see Historical and Statutory Notes following § 42-3502.06.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

Editor's notes. — Application of Law 9-154: Section 3 of D.C. Law 9-154 provided that the act shall not apply to any increase in a rent

ceiling for a rental unit, or to any increase in the rent charged for a rental unit, when the capital improvement petition has been approved by the Rent Administrator and the resultant rent increase was implemented prior to September 26, 1992.

CASE NOTES

ANALYSIS

Amount and cost of improvements.

Attorney fees.

Building permits.

Cost allocation.

Habitability as basis for improvement.

Improvements immediately necessary for health or safety.

In general.

Judicial review.

Waiting period.

Amount and cost of improvements.

A residential landlord is entitled to recover, through rent ceiling surcharge, the total interest expense for a capital improvement loan obtained by the landlord, even if the loan term exceeds the 96-month amortization period for the surcharge. *Carillon House Tenants' Ass'n v. D.C. Rental Hous. Comm'n*, 793 A.2d 461, 2002 D.C. App. LEXIS 47 (2002), amended by 2002 D.C. App. LEXIS 99 (D.C. May 1, 2002).

Substantial evidence in proceeding considering capital improvement petition by landlord supported decision of the Rental Housing Commission (RHC) to include cost of replacing hot and cold water risers as a capital expense, notwithstanding tenants' claim that RHC failed to determine that interests of affected tenants were being protected; there was uncontradicted testimony that old risers were rotten and that they were replaced in a particular manner in order to minimize cost and inconvenience to tenants; moreover, RHC limited permissible increase in rent ceiling to 15% and applied it only to units receiving actual benefit of the risers. D.C. Code 1981, § 45-2520(c)(2). *Columbia Realty Venture v. District of Columbia Rental Housing Com.*, 590 A.2d 1043, 1991 D.C. App. LEXIS 106 (1991).

For purposes of granting capital improvement petitions for rent ceiling increases, housing provider was required to establish amount and cost of improvements exclusive of interest and service charges, regardless of whether issue was challenged by tenants. D.C. Code 1981, § 45-2520(b)(2). *Tenants of 500 23rd Street v. District of Columbia Rental Housing Com.*, 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Determination of Rental Housing Commissioner that housing provider's failure to establish amount and cost of improvements exclu-

sive of interest and service charges was not issue in dispute over granting of capital improvement petitions for rent ceiling increases was harmless error, inasmuch as nothing in testimony of housing provider's witness on issue of costs contained least indication that costs included interest or service charges. D.C. Code 1981, § 45-2520(b)(2). *Tenants of 500 23rd Street v. District of Columbia Rental Housing Com.*, 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Attorney fees.

Three of eight issues raised by tenants in opposition to decision by Rental Housing Commission ordering rent ceiling adjustment for capital improvements were groundless and entitled prevailing housing provider to attorney fees of \$1,100; challenge to allocation of cost of improvements was offered without explanation or argumentation, tenants never objected to contractor's failure to produce file pursuant to subpoena to provider, and Commission was not required to deny improvement petitions based on defects in notice to a few tenants not shown to be contesting petitions. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Building permits.

Rental Housing Commission (RHC) erred in failing to require landlord which sought increase in rent ceilings for capital improvements to present proof that all necessary permits had been obtained. D.C. Code 1981, § 45-2520(b)(3). *Columbia Realty Venture v. District of Columbia Rental Housing Com.*, 590 A.2d 1043, 1991 D.C. App. LEXIS 106 (1991).

Failure of housing provider to establish that construction permit had been secured for roof replacement on rental complex was not ground for dismissal of capital improvement petitions for rent ceiling increases, inasmuch as no permit would have been necessary under construction code for roofing work, despite its extensive nature. D.C. Code 1981, § 45-2520(b). *Tenants of 500 23rd Street v. District of Columbia Rental Housing Com.*, 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Cost allocation.

Rental Housing Commission acted consistently with Rental Housing Act when it allo-

cated cost of converting freight elevator to passenger elevator pursuant to landlord's capital improvement petition equally among residential and commercial tenants, despite evidence that commercial tenants were responsible for more traffic into elevators than were residential tenants. D.C. Code 1981, § 45-2520(c). 1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Housing Com., 575 A.2d 306, 1990 D.C. App. LEXIS 139 (1990).

Habitability as basis for improvement.

Hearing examiner's decision that each of improvements proposed by housing provider would enhance the habitability of housing accommodation, warranting rent increase, should have been upheld, even though not all items listed in petition as enhancing habitability were mentioned in housing code, or already existed in the rental unit. D.C. Code 1981, § 45-2520. Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Plain meaning of statute providing when rent administrator may approve rent adjustment to cover cost of capital improvements requires that all proposed improvements increase the habitability of the housing accommodation. D.C. Code 1981, § 45-2520. Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Restrictive meaning given by rental housing commission of the word "habitability," as used in statute providing when rent administrator may approve rent adjustment to cover cost of capital improvements, which defined habitability as being limited to items specifically mentioned in housing code, or already existing in rental unit at time of leasing, was not warranted; definition given by commission contradicted ordinary and plain meaning of the language of the statute, and the District of Columbia Council did not indicate that it intended term to be defined in such a restrictive manner. D.C. Code 1981, § 45-2520. Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Determination of whether particular improvement enhances the habitability of housing accommodation for purposes of statute providing when rent administrator may approve rent adjustment to cover cost of capital improvements should be made within context of the Rental Housing Act and its stated purposes. D.C. Code 1981, §§ 45-2502, 45-2520. Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Analysis of whether to grant housing provider's capital improvement petition must include, not only, determination that proposed item

would increase the value or worth of the habitability of the housing accommodation, but also whether the proposed improvement would singularly, or in conjunction with other proposed improvements, serve to erode availability of moderately priced housing. D.C. Code 1981, §§ 45-2502, 45-2520. Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Improvements immediately necessary for health or safety.

Statute establishing date for filing petition for approval of rent adjustment for improvements made on basis of immediate necessity establishes final date for filing such petitions, rather than beginning date. D.C. Code 1981, § 45-2520(g, i). Tenants of 500 23rd Street v. District of Columbia Rental Housing Com., 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Determination by Rental Housing Commission that improvements to roofs of rental complex bore reasonable relationship to serious health hazard, making roof replacement immediately necessary and allowing replacements to be undertaken without prior approval of rent adjustment, was supported by sufficient evidence, including testimony of president of engineering firm that there was extensive deterioration of existing roof membranes and that repair was necessary to put roofs in basic watertight condition before cold winter weather set in. D.C. Code 1981, § 45-2520(g). Tenants of 500 23rd Street v. District of Columbia Rental Housing Com., 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Ultimate judgment of whether improvements to rental property are "immediately necessary" within meaning of statute allowing such improvements to be undertaken without prior approval of rent adjustment is at best mixed question of law and fact, as to which Rental Housing Commission must make its own determination while deferring to subsidiary findings of hearing examiner. D.C. Code 1981, §§ 45-2520(g), 45-2526(h). Tenants of 500 23rd Street v. District of Columbia Rental Housing Com., 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

In general.

Under Rental Housing Act, Rent Administrator is empowered to authorize landlord to implement capital improvement rent increase once improvements are completed; there is no mandatory automatic stay of rent increase pending final resolution on appeal. D.C. Code 1981, §§ 45-2520(a)(1, 2), (e), 45-2526(l). Cafritz Co. v. District of Columbia Rental Housing Com., 615 A.2d 222, 1992 D.C. App. LEXIS 261 (1992).

Rental Housing Commission was within its authority in refusing to apply housing inspection requirement to capital improvement petitions for rent ceiling increases, inasmuch as Commission's change in policy to require inspection in connection with capital improvement petitions was made prospectively only and did not apply to petitions at issue, which were filed before date of change. D.C. Code 1981, §§ 45-2518, 45-2520. *Tenants of 500 23rd Street v. District of Columbia Rental Housing Com.*, 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

Tenants' request to reduce rent ceiling could not be raised as de facto counterclaim in context of landlord's capital improvement petition seeking increase in rent ceiling due to improvements on roofs that served as tenants' decks; impairment alleged by tenants, that work done on capital improvement temporarily interfered with tenants' use of premises, was properly addressed in separate tenant petition under Rental Housing Act. D.C. Code 1981, § 45-2591(a). *Tenants of 2301 E Street, N.W. v. District of Columbia Rental Housing Com.*, 580 A.2d 622, 1990 D.C. App. LEXIS 230 (1990).

Judicial review.

Rental Housing Commission's decisions dis-

missing housing providers' capital improvement petitions in part and remanding them in part were not final and, thus, Court of Appeals lacked jurisdiction over petitions for review of those decisions. D.C. Code 1981, § 45-2520. *Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, 631 A.2d 415, 1993 D.C. App. LEXIS 235 (1993).

Waiting period.

Landlord, after filing petition for rent ceiling increase for proposed improvements, must wait 60-days for administrator's decision before commencing improvements to rental property. D.C. Code 1981, § 45-2520(e). *Lenkin Co. Mgmt. v. District of Columbia Rental Hous. Comm'n*, 642 A.2d 1282, 1994 D.C. App. LEXIS 84 (1994).

In granting tenant rent ceiling rollback, Rental Housing Commission (RHC) could find that 112 proposed light fixtures were not a unitary system and grant rollback only for those ten of the fixtures installed before expiration of 60-day period after filing of petition for rent ceiling increase. D.C. Code 1981, § 45-2520(e). *Lenkin Co. Mgmt. v. District of Columbia Rental Hous. Comm'n*, 642 A.2d 1282, 1994 D.C. App. LEXIS 84 (1994).

§ 42-3502.11. Services and facilities.

If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.

(July 17, 1985, D.C. Law 6-10, § 211, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(c), 33 DCR 7836; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.08, 42-3502.16 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2521.

Effect of amendments. — D.C. Law 16-145 substituted "rent charged" for "rent ceiling".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-3502.05.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

In general.

Sublessor was statutorily prohibited from charging subtenants more rent than she paid to her landlord even if she paid utility and repair expenses associated with rental units; sublessor could not bear those expenses and pass them on to subtenants in form of rent. D.C. Code 1981, §§ 45-2516(a), 45-2503(28). *Slaby v. District of Columbia Rental Hous. Comm'n*, 685 A.2d 1166, 1996 D.C. App. LEXIS 262 (1996), writ of certiorari denied by 520 U.S. 1190, 117 S. Ct. 1478, 137 L. Ed. 2d 690, 1997 U.S. LEXIS 2612, 65 U.S.L.W. 3712 (1997).

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases land-

lord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Finding of rent administrator that landlord violated housing regulations without finding that there was substantial decrease in services warranted only rollback in rent charged rather than rent ceiling reduction under statute [D.C. Code 1980 Supp. § 45-1692] which authorizes reduction in rent ceiling upon substantial reduction in services; thus, rent ceiling was never validly lowered so as to trigger landlord's liability for receipt of excess rent and treble damages. D.C. Code 1980 Supp. § 45-1699.24(a). *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

§ 42-3502.12. Hardship petition.

(a) Where an election has been made under § 42-3502.06(c) to seek a rent adjustment through a hardship petition, the Rent Administrator shall, after review of the figures and computations set forth in the housing provider's petition, allow additional increases in rent which would generate no more than a 12% rate of return computed according to subsection (b) of this section.

(b) In determining the rate of return for each housing accommodation, the following formula, computed over a base period of the 12 consecutive months within 15 months preceding the filing of a petition under this chapter, shall be used to:

(1) Obtain the net income by subtracting from the sum of maximum possible rental income which can be derived from a housing accommodation to which this section applies and the maximum amount of all other income which can be derived from the housing accommodation the following:

(A) The operating expenses, but the following items shall not be allowed as operating expenses:

(i) Membership fees in organizations established to influence legislation and regulations;

(ii) Contributions to lobbying efforts;

(iii) Contributions for legal fees in the prosecution of class action cases;

(iv) Political contributions to candidates for office;

(v) Mortgage principal payments;

(vi) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method;

(vii) Attorney's fees charged for services connected with counseling or litigation related to actions brought by the District government due to the

housing provider's repeated failure to comply with applicable housing regulations as evidenced by violation notices issued by the Department of Consumer and Regulatory Affairs; and

(viii) Any expenses for which the tenant has lawfully paid directly;

(B) The management fee, where applicable, of not more than 6% of the maximum rental income of the housing accommodation unless an additional amount is approved by the Rent Administrator as follows:

(i) The housing provider shall first file with the Rent Administrator a petition which contains information the Rent Administrator may require, including, but not limited to, the name of the payee; and

(ii) If the Rent Administrator determines, based on the petition and other information the Rent Administrator may require, that the excess over 6% of maximum possible income or part of income is reasonable, the Rent Administrator may permit the same excess or so much of the excess as is reasonable;

(C) Property taxes;

(D) Depreciation expenses to the extent reflected in decreased real property tax assessments;

(E) Vacancy losses for the housing accommodation of not more than 6% of the maximum rental housing income of the housing accommodation unless an additional amount is approved by the Rent Administrator;

(F) Uncollected rents; and

(G) Interest payments;

(2) Then, divide the net income by the housing provider's equity in the housing accommodation to determine the rate of return.

(c) The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, and the Rent Administrator, by order served upon the parties at least 10 days prior to the expiration of 90 days, makes a provisional finding as to the rent charged adjustment justified by the petition, the housing provider may implement only the amount of the rent charged adjustment authorized by the order. Except to the extent modified by this subsection, the provisions of § 42-3502.16 shall apply to any adjustment under this section.

(July 17, 1985, D.C. Law 6-10, § 212, 32 DCR 3089; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.06, 42-3502.08, 42-3502.13, 42-3502.16 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2522.

Effect of amendments. — D.C. Law 16-145, in subsec. (c), substituted "rent charged" for "rent ceiling".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment

Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Burden of proof.
Capital expenditures.
Cash basis or accrual accounting.
Duties and authority of Rent Administrator.
In general.
Interest and mortgage payments.
Judicial review.
Rate of return calculation components.
Registration.
Rent ceilings.
Withdrawal of petition.

Burden of proof.

Rental Housing Commission's loss of documents submitted by housing provider did not relieve provider of its burden to establish that expense data cited in hardship petition was accurate. D.C. Code 1981, § 1-1509(c); D.C.Mun.Reg. title 14, § 4209.16. *Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n.*, 682 A.2d 178, 1996 D.C. App. LEXIS 170 (1996).

Where landlord seeks to obtain rent increase by hardship petition pursuant to D.C. Code 1981, § 45-1517(c), burden of proof rests upon proponent of petition; evidence must establish that expense data, i.e., rate of return, cited in petition is accurate. D.C. Code 1981, § 1-1509(b). *Liuksila v. District of Columbia Rental Housing Com.*, 503 A.2d 666, 1986 D.C. App. LEXIS 265 (1986).

Where landlord elects to seek rent adjustment through hardship petition, landlord bears burden of proof. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Regulations which govern landlords' hardship petitions for upward adjustment of rent ceilings give notice of heavy burden of proof placed on landlords to provide adequate documentation to support their petitions. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Finding that landlord failed to provide verification of claimed lost income from uncollected rents was unsupported by documentation which landlord made available to rent administrator at hearing on landlord's hardship petition for upward adjustment of rent ceilings.

D.C. Code 1981, § 1-1510(a)(3)(E). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Capital expenditures.

On landlord's hardship petition for upward adjustment of rent ceilings, expenditures for new boiler, refrigerators, ranges, sinks and cabinets installed during reporting period were properly treated as capital expenditures, which were required to be amortized over their useful life, rather than operating expenses. D.C. Code 1981, § 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Cash basis or accrual accounting.

On landlord's hardship petition for upward adjustment of rent ceilings, landlord, who operated under cash basis method of accounting, was not entitled to estimate unbilled water and sewer service charges which it had not paid, regardless of when expenses were incurred. *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Proposed regulation of rental housing commission that landlord's reported expenses on hardship petition for upward adjustment of rent ceilings not exceed expenses for more than 12-month period does not require that expenses reported be for same 12-month period as reporting period, which requirement would be inconsistent with purpose of statute which governs calculations of landlord's return on equity. D.C. Code 1981, § 45-1523. *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Prepaid payroll and insurance expenditures, which covered 12-month periods and were paid within reporting period, of landlord, who elected to use cash basis method of accounting, were improperly disallowed from landlord's hardship petition for upward adjustment of rent ceilings on ground that expenditures did not benefit reporting period. D.C. Code 1981, § 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Duties and authority of Rent Administrator.

It is function of rent administrator as fact finder to evaluate evidence and determine

whether it is sufficient to support landlord's petition for upward adjustment of rent ceilings. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

A party may come directly to the trial court only to enforce, not to challenge, a decision of the rent administrator. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

In general.

Method for calculating hardship rent ceiling increases is dictated by statute, and Rental Housing Commission (RHC) is not free to adopt different method. D.C. Code 1981, § 45-2522(a, b). *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

If initial rent increase pursuant to landlord's hardship petition is improper (or is rescinded or nullified) and later increase builds upon the first, amount of second increase must be recalculated. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Jury question was presented as to whether landlord suing for rent had satisfied statutory requirement for obtaining hardship increase in allowable rent, that it had substantially complied with housing code violations; tenant had testified that landlord had not abated preexisting housing code violations, which she had described in some detail, and landlord had offered evidence, including violation abatement cards, testimony by housing inspector, and his own testimony. D.C. Code 1981, §§ 45-2503(4), 45-2518(a)(1)(A), (b)(1), 45-2522. *McKenzie v. McCulloch*, 634 A.2d 430, 1993 D.C. App. LEXIS 300 (1993).

Hardship rental increase provision of the Rental Housing Act of 1980 [D.C. Code 1981, § 45-1523] includes single co-op units. D.C. Code 1981, § 45-1501 et seq. *Liuksila v. District of Columbia Rental Housing Com.*, 503 A.2d 666, 1986 D.C. App. LEXIS 265 (1986).

In landlord's action for possession based on tenant's failure to pay increased rent, evidence that landlord did not comply, until September 4, 1981, with rent administrator's condition for increased rent that landlord remedy existing housing code violations and that the Rental Housing Commission receive notification from the Department of Housing and Community Development that the violations had been abated, was sufficient to support finding that landlord was not entitled to rent increase until November 1, 1981, following the required 30-day notice after full compliance with the rent administrator's decision. D.C. Code 1981, § 45-1519(b); D.C. Code 1980 Supp. §§ 45-1689,

45-1689(b)(1). *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Where landlord attempted to comply with rent administrator's conditions for granting landlord's "hardship petition" and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord's action for possession based on the conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Interest and mortgage payments.

Landlord could be granted hardship rent ceiling increase based on interest expenses, even though landlord had paid off mortgage and no longer had any interest expense, where statute and regulation mandated retrospective approach in calculating hardship increases. D.C. Code 1981, § 45-2522(a, b); D.C. Mun.Reg. tit. 14, § 4209.10(b). *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Judicial decision invalidating failure to reinvest loan proceeds in property as basis for refusing to grant deduction for interest on loan in calculating return on landlord's equity, for purposes of request for substantial hardship rent increase, did not also invalidate lack of arm's length negotiations, allegedly resulting in windfall to insider, as basis for denying deduction. D.C. Code 1981, § 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Landlord was not required to show that proceeds of loan were being reinvested in property or utilized for benefit of tenants for interest on loan to be deducted as expense in calculating landlord's return on its equity, for purposes of request for substantial hardship rent increase. D.C. Code 1981, § 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Valet shop that was given space in apartment complex rent-free, but which produced no income for landlord but was rather allowed in complex as convenience to tenants, was not kind of commercial facility whose interest payments would not be deductible in calculating landlord's return on equity, for purposes of the landlord's request for a substantial hardship rent increase. D.C. Code 1981, § 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

When Rental Housing Commission held that owner who filed hardship petition of multiple dwelling was not entitled, in calculating his net income from property, to deduct interest payments and mortgage loan because he failed to demonstrate that borrowed money had been reinvested in premises, the Commission could not require owner to treat same mortgage loan as encumbrance on property, thus reducing value of his equity in calculation of his rate of return under rent stabilization program. D.C. Code 1981, §§ 45-2501 et seq., 45-2502(1), 45-2522; §§ 45-1502(1), 45-1523 (repealed). *James Parreco & Son v. District of Columbia Rental Housing Com.*, 567 A.2d 43, 1989 D.C. App. LEXIS 246 (1989).

Judicial review.

Appropriate amount of monthly rent to be paid by tenant pursuant to protective order issued to landlord in possession proceeding it had brought against tenant for nonpayment of rent after landlord conditionally increased tenant's monthly rent from \$917 to \$2,000 pursuant to a pending hardship petition in which landlord sought rent adjustment in order to receive statutory maximum 12 percent rate of return on investment, was \$1,150, rather than \$1,500, as ordered by trial court; while trial judge appropriately weighed the equities by weighing landlord's entitlement to interim rent against a predictive assessment of strength of tenant's objections to a rent increase, trial court passed too lightly over tenant's unchallenged testimony about the limits of rent she could pay without having to move. *Graham v. Lanier Assocs.*, 19 A.3d 361, 2011 D.C. App. LEXIS 232 (2011).

Rental Housing Commission's ruling on landlord's request for substantial hardship rent increase was not final order, subject to immediate judicial review, in view of Commission's adherence to its prior remand of case to rent administrator for further findings; instead, tenants' entitlement to review ripened only when rent administrator issued its decision on remand. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Tenants' request for judicial review of decision of Rental Housing Commission granting substantial hardship rent increase to landlord was not subject to dismissal for failure of tenants to appeal rent administrator's remand decision to Commission, as Commission had already resolved all other issues in case and remanded issues were resolved by stipulation, so there was no adverse ruling from which tenants could appeal to Commission, and second administrative appeal would have been altogether futile. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522. *Tenants of 1255*

N.H. Ave. v. District of Columbia Rental Hous. Comm'n, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Rate of return calculation components.

Parking garage for apartment complex was not commercial establishment whose expenses would be excluded in calculating landlord's return on equity, for purposes of request for substantial hardship rent increase; because substantial hardship statute specifically required income from garage to be considered, its expenses also belonged in hardship petition calculus. D.C. Code 1981, §§ 45-2503(23), 45-2522(b)(1). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Prior owner's equity in property could not be used to determine current landlord's rate of return, for purposes of determining whether landlord was entitled to hardship rent increase. D.C. Code 1981, §§ 45-2502, 45-2522(b)(2). *Kates v. District of Columbia Rental Hous. Comm'n*, 630 A.2d 1131, 1993 D.C. App. LEXIS 219 (1993).

Landlord was not entitled to remand of hardship petition for upward adjustment of rent ceilings to permit reconsideration of claim for management fees for which it failed to provide sufficient documentation at hearing before rent administrator. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Registration.

Whether "base rent" for unit in building which was not timely registered, which was prerequisite to implementing rent increases, was rent charged in year later than year specified in Rental Housing Act, because landlord's occupancy of one of five units entitled him to a period of exemption under the small landlord exemption, was issue to be resolved in first instance by Rental Housing Commission. D.C. Code 1981, §§ 45-1503(2), 45-1516(a)(3), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Landowner's failure to register his building, which was prerequisite to implementing rent increases, was not excused, despite landlord's contention that his failure to comply with registration requirement arose out of governmental negligence which prevented him from securing certificate of occupancy, which was needed to register. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Landlord did not "constructively register" his building, which was prerequisite to implementing rent increases, by virtue of temporary reg-

istration number he was granted until he attained necessary final certificate of occupancy and housing business license. D.C. Code 1981, §§ 45-1516(d)(1, 2), 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

In view of fact that rent of a unit may not be increased above base rent unless unit is properly registered, and that almost full amount of rent overcharge award to tenant accrued prior to landlord's registration, Rental Housing Commission properly determined that rent ceiling for unit was equal to base rent. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rent ceilings.

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission properly set rent ceilings of all units in landlord's building as of registration at base rent level, notwithstanding landlord's contention that such decision led to permanent loss of all cost of living increases in ten-year period preceding time when landlord properly registered building. D.C. Code 1981, § 45-1519(a)(1)(B) (repealed). *Temple v. District of Columbia Rental Housing*

Com., 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rent administrator's order upon hardship petition which raised rent ceiling for prior landlord upon certification of compliance with housing regulations raised present landlord's rent ceiling, even though certification had never been made; thus, rent charged was below ceiling. D.C. Code 1980 Supp. §§ 45-1687(a), 45-1693. *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

Withdrawal of petition.

When landlord withdrew hardship petition for rent ceiling increase while petition was pending before rent administrator on remand, rent ceiling increase authorized with regard to that petition was a nullity. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

When landlord withdrew hardship petition for rent ceiling increase, but then increased tenants' rent as if 17% increase it had obtained with regard to that petition remained valid, rent ceiling under another hardship petition had to be determined anew. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

Tenants, in appeal from granting of landlord's hardship petition for rent ceiling increase, could challenge rent increases obtained under prior hardship petition that ultimately was withdrawn by landlord, since landlord was no longer entitled to increase granted with regard to prior petition following landlord's withdrawal of that petition. D.C. Code 1981, §§ 45-2516(a, c), 45-2522. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, 650 A.2d 667, 1994 D.C. App. LEXIS 215 (1994).

§ 42-3502.13. Vacant accommodation.

(a) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the amount of rent charged may, at the election of the housing provider, be increased:

(1) By 10% of the current allowable amount of rent charged for the vacant unit; or

(2) To the amount of rent charged for a substantially identical rental unit in the same housing accommodation; provided, that the increase shall not exceed 30% of the current lawful amount of rent charged for the vacant unit, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 42-3502.05(d).

(b) For the purposes of this section, rental units shall be defined to be substantially identical where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height, if exposure and height have previously been factors in the amount of rent charged, and are in comparable physical condition.

(c) No rent increase under subsections (a)(1) and (a)(2) may be sought or granted within the 12-month period following the implementation of a hardship increase under § 42-3502.12.

(d) Within 15 days after of the commencement of the new tenancy, the housing provider shall disclose to the tenant on a form published by the Rent Administrator (or in another suitable format until a form is published):

(1) The applicable rent for the rental unit at the commencement of the tenancy;

(2) The amount of the increases in the amount of rent charged for the rental unit during the preceding 3 years, including the basis for each increase and, if applicable, the identification of any substantially identical rental unit on which a vacancy increase is based, and the current increase in the rent charged; and

(3) The identification of any substantially identical rental unit on which the vacancy increase is based.

(July 17, 1985, D.C. Law 6-10, § 213, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(d), 33 DCR 7836; Aug. 5, 2006, D.C. Law 16-145, § 2(f), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.08, 42-3502.16 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2523.

Effect of amendments. — D.C. Law 16-145, in the lead-in language to subsec. (a), substituted “the amount of rent charged may, at the election of the housing provider, be increased.” for “the rent ceiling may, at the election of the housing provider, be adjusted to either:”; in par. (a)(1), substituted “(1) By 10% of the current allowable amount of rent charged for the vacant unit; or” for “(1) The rent ceiling which would otherwise be applicable to a rental unit under this chapter plus 12% of the ceiling once per 12-month period; or”; in par. (a)(2), substituted “(2) To the amount of rent charged for a substantially identical rental unit in the same housing accommodation; provided, that the increase shall not exceed 30% of the current

lawful amount of rent charged for the vacant unit” for “(2) The rent ceiling of a substantially identical rental unit in the same housing accommodation”; and added subsec. (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-3502.05.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Certificate of election.
In general.
Remand.

Certificate of election.

Low-income housing provider forfeited its right to rent ceiling adjustments by failing to perfect them by timely filing with rent administrator and affected tenants a certificate of

election of vacancy rent ceiling adjustment; after first vacancy, provider did not file to take an adjustment until approximately five months later, well beyond 30-day time limit, and with respect to second vacancy, provider did not file for adjustment until almost two months later, and thus, neither vacancy could support a subsequent rent increase, absent properly perfected adjustment. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

In general.

Multibuilding housing complex may be considered "housing accommodation" for purpose of vacancy rent increases. *Marshall v. District of Columbia Rental Housing Com.*, 533 A.2d 1271, 1987 D.C. App. LEXIS 499 (1987).

Statute [D.C. Code 1981, § 45-1524(a)] allowing a vacancy increase in rent applies only when there has been some additional costs to landlord that would justify increase. *Guerra v. District of Columbia Rental Housing Com.*, 501 A.2d 786, 1985 D.C. App. LEXIS 548 (1985).

Landlord could not implement vacancy increase in rent ceiling for rental unit when there had been a change in tenants but rental unit had never actually become vacant because a subtenant, common to both tenants, had re-

mained in possession of rental unit; consequently, a subsequent increase, calculated on basis of improper increase, was also improper. *D.C. Code 1981, § 45-1524(a)*. *Guerra v. District of Columbia Rental Housing Com.*, 501 A.2d 786, 1985 D.C. App. LEXIS 548 (1985).

Statute [D.C. Code 1981, § 45-1524(a)] allowing vacancy increase in rent allows landlord to increase rent ceiling for rental unit only after it has in fact become vacant. *Guerra v. District of Columbia Rental Housing Com.*, 501 A.2d 786, 1985 D.C. App. LEXIS 548 (1985).

Remand.

In view of fact that landlord was discouraged in attempts to have rent ceilings established for units so as to implement authorized increases, landlord could not subsequently be penalized for failure to comply with procedures necessary for implementing rent increases; therefore, remand was required for determination of what automatic or voluntary vacancy increases landlord might be entitled to in base rents of units, starting with first date he made good-faith inquiry into establishing rent ceilings. *D.C. Code 1981, §§ 45-1517(b), 45-1524 (repealed)*. *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

§ 42-3502.14. Substantial rehabilitation.

(a) If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent charged for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent charged applicable to the rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications, and projected costs for the rehabilitation, which shall be made available to the Rent Administrator by the housing provider of the rental unit or housing accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors:

(1) The impact of the rehabilitation on the tenants of the unit or housing accommodation; and

(2) The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

(d) This section shall apply to the following:

- (1) Any rental unit with respect to which a housing provider has notified the tenant, after July 17, 1985, of an intent to substantially rehabilitate; and
- (2) Any rental unit with respect to which, before July 17, 1985:

(A) The housing provider has notified the tenant of the intended substantial rehabilitation; and

(B) All the tenants have left.

(July 17, 1985, D.C. Law 6-10, § 214, 32 DCR 3089; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.08, 42-3502.16, 42-3502.21 and 42-3505.01.

Prior Codifications. — 1981 Ed., § 45-2524.

Effect of amendments. — D.C. Law 16-145, in subsec. (a), substituted “rent charged” for “rent ceiling”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of

Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Benefit to tenants.
Construction and application.
Contractor's fee.
Cosmetic improvements.
In general.
Recoupment of investment.
Types of rehabilitation.

Benefit to tenants.

In order to be entitled to substantial rehabilitation rent ceiling increase, property owner must show that total cost of proposed rehabilitation of premises equals or exceeds 50% of assessed market value of property and that rehabilitation is in interest of tenants; once these requirements have been met, property owner is entitled to rent ceiling increase which may not exceed 125%. D.C. Code 1981, §§ 45-2503, 45-2524(a), (a)(2). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Landlord's petition for substantial rehabilitation of rental property could be approved by Rental Housing Commission without proof that existing conditions constituted danger to tenants' health, safety and welfare, which could not be remedied without major renovation, but existence or nonexistence of such conditions was relevant and must be one of rent administrator's principle areas of inquiry. D.C. Code 1981, §§ 45-2503(34), 45-2524, 45-2524(a), (a)(2), (c). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing*

Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Construction and application.

Apartment building owner failed to submit a detailed list of renovation costs that showed that renovation was in the interest of the tenants, and therefore his petition for substantial rehabilitation of apartment building was properly denied, where owner provided documentation that specified the average cost of renovating the rental units, but he failed to provide evidence of the specific problems, if any, existing in each unit in order to disprove the tenants' contention that much of the proposed work was not needed. *Loney v. D.C. Rental Hous. Comm'n*, 11 A.3d 753, 2010 D.C. App. LEXIS 549 (2010).

Provision for substantial rehabilitation in Rental Housing Act of 1985, which effectively permits landlord to escape proscriptions of Act and substantially raise his rent, ought to be given parsimonious interpretation rather than expansive one. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

According to plain language of Rental Housing Act of 1985, showing that substantial rehabilitation is in interest of tenants is indispensable before petition may be granted; however, statute is not tenant-consent provision, and approval of tenants as such is not required. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. *Tenants of 738 Longfellow Street, N.W. v. Dis-*

trict of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Contractor's fee.

Evidence was insufficient to support finding of Rental Housing Commission that proposed general contractor's fee was justified so as to permit inclusion of fee in substantial rehabilitation rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Cosmetic improvements.

Finding of Rental Housing Commission on petition for substantial rehabilitation rent ceiling increase that refurbishing of elevator cab would benefit tenants because it would reduce future maintenance expenses by eliminating need for future painting was not sufficiently irrational to warrant setting it aside even though some refurbishing was partially cosmetic in character. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Although showing of present danger to health, safety and welfare, not remedial by lesser measures, is not indispensable to landlord's case in petition for substantial rehabilitation rent ceiling increase statute does not authorize substantial rehabilitation leading to higher rents for optional or cosmetic changes which will render property more attractive, but which will ultimately result in replacement of tenants of low or moderate income by more affluent clientele. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Approval by Rental Housing Commission, in granting substantial rehabilitation rent ceiling increase, of proposed additions to bathrooms, which would result in improvement to appearance of bathrooms, was not arbitrary, capricious, abuse of discretion, or contrary to law even though improvement to appearance was arguably similar to cosmetic changes prohibited under Rental Housing Act of 1985. D.C. Code 1981, §§ 45-2501 et seq., 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

In general.

Rental Housing Commission must give some explanation to justify its discretionary determinations as to percentage in rent ceiling increase awarded for proposed repairs in each category. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

To be entitled to substantial rehabilitation rent ceiling increase, it was sufficient for landlord to show that proposed rehabilitation was in tenant's interest in sense that tenants' received benefit, and approval of tenants as such was not required. D.C. Code 1981, §§ 45-1611(a), 45-2525. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Large amounts of time and money should not be expended in order to fight over relatively minor items, in determining amount of substantial rehabilitation rent ceiling increase to be awarded property owner, and proceedings on remand to Rental Housing Commission should be conducted with that consideration in mind. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Recoupment of investment.

In determining amount of increase which should be authorized for each category of repairs proposed in petition for substantial rehabilitation rent ceiling increase, some consideration should be given to tenants' contention that rent ceiling increases approved by Rental Housing Commission would allow owner to recoup his entire investment for renovations in very short time. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission should determine whether 1989 regulation, which provides that when substantial rehabilitation rent ceiling increase is granted, property owner must recoup his investment over amortization period of loan or over 240 months, can be applied to case filed prior to effective date of regulation, and, even if it cannot, regulation may provide some useful guide for determining appropriate amount of rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Types of rehabilitation.

Testimony of property owner that kitchen furnishings in rental units were originally installed in 1950, were generally in state of disrepair and had exceeded their normal useful life and that renovations were necessary in order to replace water pipes in kitchens supported Rental Housing Commission's finding, in hearing on petition for substantial rehabilitation rent ceiling increase, that kitchen renovations were necessary and would benefit tenants in absence of any contradictory evidence in record. D.C. Code 1981, § 45-2524. Tenants of

738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Landlord's testimony in support of substantial rehabilitation rent ceiling increase that replacement of aged tile on laundry room floors and in common hallways throughout rental property was necessary supported Rental Housing Commission's finding that tile needed to be replaced. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Record was insufficient to support finding of Rental Housing Commission that removal of mailboxes from lobby would render premises more secure so as to permit inclusion of costs of removal in substantial rehabilitation rent ceiling increase. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Evidence was insufficient to support finding of Rental Housing Commission that replacement of light fixtures in hallways and stairwells of rental property was necessary, so as to permit inclusion of cost of replacement in substantial rehabilitation rent ceiling increase, in view of uncontroverted testimony of apparent underutilization of existing fixtures. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Rental Housing Commission was required to exclude from substantial rehabilitation rent ceiling increase proposed expenditure for replacement of light fixtures in garage on grounds that garage spaces were not provided to tenants as part of rent. D.C. Code 1981, § 45-2524. Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com., 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

§ 42-3502.15. Voluntary agreement.

(a) Seventy percent or more of the tenants of a housing accommodation may enter into a voluntary agreement with the housing provider:

- (1) To establish the rent charged;
- (2) To alter levels of related services and facilities; and
- (3) To provide for capital improvements and the elimination of deferred maintenance (ordinary repair).

(b) The voluntary agreement must be filed with the Rent Administrator and shall include the signature of each tenant, the number of each tenant's rental unit or apartment, the specific amount of increased rent each tenant will pay, if applicable, and a statement that the agreement was entered into voluntarily without any form of coercion on the part of the housing provider. If approved by the Rent Administrator the agreement shall be binding on the housing provider and on all tenants.

(c) Where the agreement filed with the Rent Administrator is to have the rent charged for all rental units in the housing accommodation adjusted by a specified percentage, the Rent Administrator shall immediately certify approval of the increase.

(July 17, 1985, D.C. Law 6-10, § 215, 32 DCR 3089; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42-3502.08 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2525.

Effect of amendments. — D.C. Law 16-145, in par. (a)(1) and subsec. (c), substituted "rent charged" for "rent ceiling".

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-145. — For

Law 16-145, see notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Nature of agreement.
Notice and hearing.
Remedies for breach.
Requisite number of tenants.

Nature of agreement.

Voluntary Agreements between landlord and tenants under Rental Housing Act are not contracts separate from leases; rather, once approved by rent administrator, Voluntary Agreement becomes integral part of now-modified lease, and courts must read two agreements together in manner that gives reasonable, lawful, and effective meaning to all their terms. D.C. Code 1981, § 45-2525(a). *Cowan v. Youssef*, 687 A.2d 594, 1996 D.C. App. LEXIS 293 (1996).

Notice and hearing.

Rental Housing Commission's determination that tenant who had not been provided with requisite notice and opportunity to object to voluntary agreement to increase rent but had right to challenge that portion of agreement purporting to relinquish tenant's individual rights to claim for rent overcharges was not unreasonable or contrary to controlling statute. D.C. Code 1981, § 45-1626. *Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n*, 682 A.2d 178, 1996 D.C. App. LEXIS 170 (1996).

Rent Administrator acted within his discretion in denying request for continuance, in relation to housing provider's request for approval of voluntary agreement with tenants, due to challengers' recent retention of counsel, where challengers failed to request continuance promptly after receiving notice of hearing. D.C. Code 1981, § 45-2525. *Davenport v. District of Columbia Rental Housing Com.*, 579 A.2d 1155, 1990 D.C. App. LEXIS 227 (1990).

Remedies for breach.

Voluntary agreement between landlord and tenants, under which landlord agreed to install individual heating and cooling units in tenants' apartments and tenants agreed to pay heating and cooling costs, modified original leases, so that landlord's breaches of agreement could be remedied by rent abatement. D.C. Code 1981, § 45-2525(a). *Cowan v. Youssef*, 687 A.2d 594, 1996 D.C. App. LEXIS 293 (1996).

Rent abatement may be awarded as damages for breach of Voluntary Agreement entered into pursuant to Rental Housing Act. D.C. Code 1981, § 45-2525(a). *Cowan v. Youssef*, 687 A.2d 594, 1996 D.C. App. LEXIS 293 (1996).

Upon landlord's breach of voluntary agreement entered under Rental Housing Act, tenants could properly seek common-law damages by bringing action for breach of contract; tenants were not limited to administrative proceeding before Rental Housing Commission. D.C. Code 1981, § 45-2525(a). *Cowan v. Youssef*, 687 A.2d 594, 1996 D.C. App. LEXIS 293 (1996).

Requisite number of tenants.

Fact that tenants whose signatures were counted to make up 70% necessary for voluntary agreement with housing provider did not all sign same version of agreement did not render agreement invalid, where addenda in subsequent agreements did not change central provisions of agreement, but rather modified agreements so as to enhance rights of tenants; later versions of agreement, being more beneficial to tenants, did not impose new obligations upon original tenant signatories. D.C. Code 1981, § 45-2525. *Davenport v. District of Columbia Rental Housing Com.*, 579 A.2d 1155, 1990 D.C. App. LEXIS 227 (1990).

Rent Administrator could allow housing provider to submit additional signatures to satisfy requirement that 70% or more of tenants enter into voluntary agreement, despite having ruled, on issue of first impression, that submission of additional signatures was not permissible after voluntary agreement was filed. D.C. Code 1981, § 45-2525. *Davenport v. District of Columbia Rental Housing Com.*, 579 A.2d 1155, 1990 D.C. App. LEXIS 227 (1990).

Tenant whose lease was still in effect when fire broke out and who was not alleged to have caused or occasioned fire continued as "tenant" for purposes of determining number of tenants needed to voluntarily agree to adjustment of rent ceiling; therefore, in view of fact that tenant's inclusion meant that only 60% rather than 70% of tenants had signed agreement, agreement was properly invalidated. D.C. Code 1981, § 1-1510(a)(3)(A); § 45-1561(f) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

§ 42-3502.16. Adjustment procedure.

(a) The Rent Administrator shall consider adjustments allowed by §§ 42-3502.10, 42-3502.11, 42-3502.12, 42-3502.13, and 42-3502.14 or a challenge to a § 42-3502.06 adjustment, upon a petition filed by the housing provider or tenant. The petition shall be filed with the Rent Administrator on a form provided by the Rent Administrator containing the information the Rent Administrator or the Rental Housing Commission may require. The Rent Administrator shall issue a decision and an order approving or denying, in whole or in part, each petition within 120 days after the petition is filed with the Rent Administrator. The time may be extended only by written agreement between the housing provider and tenant of the rental unit.

(b) Immediately upon receipt of the petition, the Rent Administrator shall notify the nonpetitioning party, housing provider or tenant, by first-class mail, of the right of either party to make, within 15 days after the receipt of the notice, a written request for a hearing on the petition. The Rent Administrator may deny the petition if the issue is moot or the petition does not comply with subsection (a) of this section.

(c) If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by first-class mail at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

(d) Each housing provider of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator, within 15 days after a demand is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator or the Rental Housing Commission may require.

(e) The Rent Administrator may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(f) The Rent Administrator may, without holding a hearing, refuse to adjust the rent charged for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under this section, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980 for adjustment to the same rental units within the 6 months immediately preceding the filing of the pending petition.

(g) All petitions filed under this section, all hearings held relating to the petitions, and all appeals taken from decisions of the Rent Administrator shall be considered and held according to the provisions of this section and title I of the District of Columbia Administrative Procedure Act. In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall prevail.

(h) Decisions of the Rent Administrator shall be made on the record relating to any petition filed with the Rent Administrator. An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental

Housing Commission within 10 days after the decision of the Rent Administrator, or the Rental Housing Commission may review a decision of the Rent Administrator on its own initiative. The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision. The Rental Housing Commission shall issue a decision with respect to an appeal within 30 days after the appeal is filed.

(i) No increase in rent allowed under this chapter shall be implemented unless the tenant concerned has been given written notice under § 42-3509.04.

(j) A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by first-class mail to the parties.

(k) The Rent Administrator and, where applicable, the Rental Housing Commission shall accord priority to a housing provider hardship petition covering a housing accommodation for which the federal government is entitled to approve rent increases, where the processing of such a petition has not begun within 45 days immediately following the filing of the petition. Processing of the petitions shall begin no later than 5 days after receipt by the Rent Administrator of written requests from the housing provider and from the federal agency.

(l) No rent increase above that authorized by the Rent Administrator may be implemented by a housing provider during the pendency of an appeal by that housing provider to the Rental Housing Commission or the District of Columbia Court of Appeals where the appeal concerns the validity of that increase.

(m) The service of any document in a proceeding under this section, including a petition, hearing notice, and decision, shall be accompanied by a certificate of service specifying, at a minimum:

- (1) The person served;
- (2) The date served and by whom; and
- (3) The manner of service.

(July 17, 1985, D.C. Law 6-10, § 216, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, §§ 13(e), (f), 33 DCR 7836; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889; Mar. 3, 2010, D.C. Law 18-111, § 3031, 57 DCR 181.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05, 42.3502.06, 42-3502.08, 42-3502.12, and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2526.

Effect of amendments. — D.C. Law 16-145, in subsec. (f), substituted “rent charged” for “rent ceiling”.

D.C. Law 18-111, in subsec. (b), substituted “by first-class mail” for “by certified mail or other form of service which assures delivery of

the petition”; in subsec. (c), substituted “by first-class mail” for “by certified mail or other form of service which assures delivery”; in subsec. (j), substituted “by first-class mail” for “by certified mail or other form of service which assures delivery of the decision”; and added subsec. (m).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

For temporary (90 day) amendment of section, see § 3011 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 3031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 3031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see His-

torical and Statutory Notes following § 42-3502.05.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Short title. — Short title: Section 3030 of D.C. Law 18-111 provided that subtitle D of title III of the act may be cited as the "Office of Administrative Hearings Mailing Certification Amendment Act of 2009".

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

References in text. — The "District of Columbia Administrative Procedure Act," referred to in subsection (g), is Chapter 5 of Title 2. Title I of the District of Columbia Administrative Procedure Act is subchapter I of Chapter 5 of Title 2.

CASE NOTES

ANALYSIS

Exhaustion of administrative remedies.
In general.
Time for filing appeal.

Exhaustion of administrative remedies.

Court of Appeals would not consider the merits of decision by the Rental Accommodations and Conversion Division (RACD) to deny housing provider's motion to vacate award, in lieu of remand, on ground of the Rental Housing Commission's (RHC) alleged bad faith in dismissing appeal as untimely without reaching the merits of the motion, absent a basis for imputing any such unprincipled conduct to the RHC or the RACD sufficient to relieve a party of the normal duty to exhaust administrative remedies as a condition of review by the court. D.C. Code 1981, §§ 45-2526(h), 45-2529. *Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24, 1999 D.C. App. LEXIS 270 (1999).

Tenants who had filed rent reduction claim under the Rental Housing Act would not be excused from exhausting administrative remedies, though Rent Administrator's failure to rule on issue had caused case to drag on for over seven years, where tenants failed to demonstrate that administrative appeal would be futile. D.C. Code 1981, § 45-2526. *C Street Tenants Asso. v. District of Columbia Rental Housing Com.*, 552 A.2d 524, 1989 D.C. App. LEXIS 5 (1989).

Where landlord attempted to comply with rent administrator's conditions for granting landlord's "hardship petition" and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord's action for possession based on the

conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Where tenants asserting illegality of rent increases in their pleadings in response to landlord's possessory action did not seek review of either of the two challenged rent increases before the rent administrator, lower court should not have undertaken to determine the validity of the rent increases. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

In general.

Under Rental Housing Act, Rent Administrator is empowered to authorize landlord to implement capital improvement rent increase once improvements are completed; there is no mandatory automatic stay of rent increase pending final resolution on appeal. D.C. Code 1981, §§ 45-2520(a)(1, 2), (e), 45-2526(l). *Cafritz Co. v. District of Columbia Rental Housing Com.*, 615 A.2d 222, 1992 D.C. App. LEXIS 261 (1992).

Ultimate judgment of whether improvements to rental property are "immediately necessary" within meaning of statute allowing such improvements to be undertaken without prior approval of rent adjustment is at best mixed question of law and fact, as to which Rental Housing Commission must make its own determination while deferring to subsidiary findings of hearing examiner. D.C. Code 1981, §§ 45-2520(g), 45-2526(h). *Tenants of 500 23rd Street v. District of Columbia Rental Housing Com.*, 585 A.2d 1330, 1991 D.C. App. LEXIS 16 (1991).

A party may come directly to the trial court only to enforce, not to challenge, a decision of

the rent administrator. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Time for filing appeal.

Rental Accommodations and Conversion Division (RACD), by mailing decision of hearing officer by regular first-class mail, instead of by certified mail or other form of service which would assure delivery, failed to comply with the statutory procedure by which such decisions were served on parties, and thus, housing provider could not be held to the 10-day period within which to file an appeal to the Rental Housing Commission (RHC) of a hearing examiner's decision, even if housing provider's letter to the RACD insufficiently apprised them of her change-of-address. D.C. Code 1981, § 45-2526(h, j); D.C.Mun.Reg. title 14, § 3911. *Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24, 1999 D.C. App. LEXIS 270 (1999).

When a decision by a hearing officer of the Rental Accommodations and Conversion Division (RACD) is mailed, the time within which to appeal to the Rental Housing Commission (RHC) begins with the date of mailing, and failure to appeal in time deprives the RHC of jurisdiction. D.C. Code 1981, § 45-2526(h); D.C.Mun.Reg. title 14, § 3816.6. *Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24, 1999 D.C. App. LEXIS 270 (1999).

Housing provider acted diligently to file her appeal to Rental Housing Commission (RHC) of decision by hearing officer of the Rental Accommodations and Conversion Division (RACD), though her appeal was not filed within the 10-day period after the mailing of the decision, due to the RACD's sending the decision by regular first-class mail to housing provider's old address; housing provider first learned of the decision after tenants moved to reconsider, she then informed the RACD of her failure to receive the decision, and she filed a written motion supporting her claim of nonreceipt by the deadline set by the RACD. D.C. Code 1981, § 45-2526(h, j); D.C.Mun.Reg. title 14, § 3911. *Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24, 1999 D.C. App. LEXIS 270 (1999).

For purposes of computing time for filing appeal from decision of the Rent Administrator,

date of decision is date of its mailing. D.C. Code 1981, § 45-1527(g). *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

Rule permitting Rent Administrator to enlarge time prescribed for appeal from its decision for good cause shown sets no outside limit on extension of time for appeal. *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

Rules providing for appeal from decisions of the Rent Administrator applied time for appeal from day after the Administrator's decision was sent to parties and not from when decision was received. D.C. Code 1981, § 45-1527(g). *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

Burden is on the Rental Housing Commission to provide proof of actual date of mailing of the Rent Administrator's decision through certified mail or accurate entries pursuant to prescribed agency mailing procedures, to commence computing time for appeal from day after decision is sent. D.C. Code 1981, § 45-1527(g). *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

Appeal to Rental Housing Commission from final decision of the Rent Administrator was timely filed, where there was no reliable evidence of when the Administrator's decision had been mailed, and appeal was filed within ten working days of its receipt, even though decision was dated June 12, it noted appeal deadline of June 29, and appeal was not filed until July 2. *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

Three additional days provided for appeal from decision of the Rent Administrator if decision is mailed are to be counted as business days, not calendar days, in that rule excluding Saturdays, Sundays, and legal holidays from computations of periods of time makes no exception for three-day mailing period. D.C. Code 1981, § 45-1527(g). *Town Center Management v. District of Columbia Rental Housing Com.*, 496 A.2d 264, 1985 D.C. App. LEXIS 445 (1985).

§ 42-3502.16a. Tenant representation by tenant organization.

(a) A tenant organization shall have standing to assert a claim in its name on behalf of one or more of its members in any petition filed pursuant to this chapter, or under Chapters 39 or 40 of Title 14 of the District of Columbia Municipal Regulations, whether initiated by or against a housing provider; provided, that:

(1) One or more members of the tenant organization have standing to assert a claim in their own right;

(2) One or more members of the tenant organization have provided the tenant organization with written authorization for it to represent that member in the proceeding governing the petition; and

(3) Neither the claim asserted nor the relief requested requires the participation of the member.

(b) Where the provisions of subsection (a) of this section have been satisfied, the tenant organization shall be granted party status and have its name placed in the caption of the proceeding.

(c) No further inquiry into the membership of the association shall be permitted.

(July 17, 1985, D.C. Law 6-10, § 216a, as added Sept. 24, 2010, D.C. Law 18-226, § 2, 57 DCR 6920.)

Legislative history of Law 18-226. — Law 18-226, the “Tenant Organization Petition Standing Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-598, which was referred to the Committee on Housing and Workforce Development. The Bill was

adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 6, 2010, it was assigned Act No. 18-470 and transmitted to both Houses of Congress for its review. D.C. Law 18-226 became effective on September 24, 2010.

§ 42-3502.17. Security deposit.

(a) No person shall demand or receive a security deposit from any tenant for a rental unit occupied by the tenant upon July 17, 1985, where no security deposit had been demanded or received of the tenant for the rental unit before July 17, 1985, but this provision shall not prevent the collection of security deposits for newly constructed units or units exempted under § 42-3502.05(a)(4) and (7). Security deposits shall be collected pursuant to the Security Deposit Act, effective February 20, 1976 (D.C. Law 1-48; 14 DCMR 308 et seq.).

(b) The Office of Administrative Hearings may adjudicate complaints for the non-return of tenant security deposits and for the nonpayment of interest on tenant security deposits pursuant to section 2908 of the Housing Regulations of the District of Columbia (14 DCMR §§ 308 through 311).

(July 17, 1985, D.C. Law 6-10, § 217, 32 DCR 3089; Mar. 14, 2007, D.C. Law 16-276, § 3, 54 DCR 889; Mar. 25, 2009, D.C. Law 17-366, § 2(h), 56 DCR 1332; June 7, 2012, D.C. Law 19-140, § 2, 59 DCR 2879.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2527.

Effect of amendments. — D.C. Law 16-276 designated existing text as subsec. (a) and inserted subsec. (b).

D.C. Law 17-366, in subsec. (b), inserted “and for the nonpayment of interest on tenant secu-

urity deposits” following “tenant security deposits”.

D.C. Law 19-140, in subsec. (b), substituted “complaints for the non-return of” for “complaints for the nonpayment of interest on”.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-276. — Law

16-276, the “Interest on Rental Security Deposits Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-785, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-633 and transmitted to both Houses of Congress for its review. D.C. Law 16-276 became effective on March 14, 2007.

Legislative history of Law 19-140. — Law 19-140, the “Tenant Security Deposits Clarifi-

cation Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-190, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on April 9, 2012, it was assigned Act No. 19-343 and transmitted to both Houses of Congress for its review. D.C. Law 19-140 became effective on June 7, 2012.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

Editor’s notes. — For Law 17-366, see notes following § 42-3401.03.

§ 42-3502.18. Remedy.

The Rental Housing Commission, Rent Administrator, or any affected housing provider or tenant may commence a civil action in the Superior Court of the District of Columbia to enforce any rule or decision issued under this chapter.

(July 17, 1985, D.C. Law 6-10, § 218, 32 DCR 3089.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2528.

Legislative history of Law 6-10. — For

legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Exhaustion of administrative remedies.
In general.

Exhaustion of administrative remedies.

When a statute provides a method of appeal from an administrative ruling, that method must be followed before resorting to any other system of review. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Where landlord attempted to comply with rent administrator’s conditions for granting landlord’s “hardship petition” and authorizing a monthly rental increase, and did not appeal the legality of those conditions to the Rental Housing Commission, such was a failure to exhaust available administrative remedies, and thus, in landlord’s action for possession based on the conditionally approved rent increase which tenant allegedly did not pay, he was bound by those conditions. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Under doctrine of primary jurisdiction, when a claim is originally cognizable in courts but requires resolution of an issue within special competence of an administrative agency, party

must first resort to agency before he or she may sue for an adjudication. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Where tenants asserting illegality of rent increases in their pleadings in response to landlord’s possessory action did not seek review of either of the two challenged rent increases before the rent administrator, lower court should not have undertaken to determine the validity of the rent increases. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

Where tenants assert in their pleadings to a possessory action brought against them by a landlord that a rent increase is invalid, but have not challenged it before the rent administrator, the superior court may, in the exercise of its discretion, accord them a reasonable time to file such a challenge; if no such challenge has been brought before rent administrator by time set for trial, the superior court is not to undertake to adjudicate validity of rent increase. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

In general.

A party may come directly to the trial court

only to enforce, not to challenge, a decision of the rent administrator. D.C. Code 1978 Supp. § 45-1631 et seq. *Rhodes v. Quaorm*, 465 A.2d 370, 1983 D.C. App. LEXIS 449 (1983).

Landlord bringing possessory action would

be required to file certified statement of costs with Rental Housing Commission only, and not with court. *Drayton v. Poretsky Management, Inc.*, 462 A.2d 1115, 1983 D.C. App. LEXIS 400 (1983).

§ 42-3502.19. Judicial review.

Any person or class of persons aggrieved by a decision of the Rental Housing Commission, or by any failure on the part of the Rental Housing Commission or Rent Administrator to act within any time certain mandated by this chapter, may seek judicial review of the decision or an order compelling the decision by filing a petition for review in the District of Columbia Court of Appeals.

(July 17, 1985, D.C. Law 6-10, § 219, 32 DCR 3089.)

Section references. — This section is referred to in §§ 42-3501.03, 42-3502.05 and 42-3502.21.

Prior Codifications. — 1981 Ed., § 45-2529.

Legislative history of Law 6-10. — For

legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

CASE NOTES

ANALYSIS

Exhaustion of administrative remedies.
Finality of challenged decision.
Preservation of issues for review.

Exhaustion of administrative remedies.

Court of Appeals would not consider the merits of decision by the Rental Accommodations and Conversion Division (RACD) to deny housing provider's motion to vacate award, in lieu of remand, on ground of the Rental Housing Commission's (RHC) alleged bad faith in dismissing appeal as untimely without reaching the merits of the motion, absent a basis for imputing any such unprincipled conduct to the RHC or the RACD sufficient to relieve a party of the normal duty to exhaust administrative remedies as a condition of review by the court. D.C. Code 1981, §§ 45-2526(h), 45-2529. *Joyce v. District of Columbia Rental Hous. Comm'n*, 741 A.2d 24, 1999 D.C. App. LEXIS 270 (1999).

Finality of challenged decision.

Rental Housing Commission's decisions dismissing housing providers' capital improvement petitions in part and remanding them in part were not final and, thus, Court of Appeals lacked jurisdiction over petitions for review of those decisions. D.C. Code 1981, § 45-2520. *Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, 631 A.2d 415, 1993 D.C. App. LEXIS 235 (1993).

An administrative proceeding to establish liability for rental overcharges finally determines merits of claim after final agency action

and, if requested, appellate court review, and this original claim merges with later court action to enforce that finally adjudicated liability for those overcharges, and hence underlying merits of judgment regarding liability are immune from collateral attack in an enforcement action. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

Preservation of issues for review.

Low-income housing provider waived for appellate review challenge against rent control regulation's 30-day deadline for perfecting rent ceiling adjustment by timely filing certificate of vacancy, lest forfeit right of adjustment, where provider failed to raise argument at hearing before Rental Housing Commission (RHC), on bases raised on appeal, that regulation was superseded by other conflicting laws. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Low-income housing provider waived for appellate review any challenge against rent control regulation's 30-day deadline for perfecting rent ceiling adjustments of vacancy, on basis of alleged typographical error in statute, where provider failed to raise issue at hearing before Rental Housing Commission (RHC), the administrative agency which promulgated the challenged rules. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Low-income housing provider waived for appellate review question as to whether rent

control regulation requiring perfection of rent ceiling adjustments by timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability, lest face forfeiture of right to adjustment, was ultra vires or demonstration of unreason-

able exercise of authority by Rental Housing Commission (RHC), where provider failed to raise issue at administrative level, at hearing before RHC. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

§ 42-3502.20. Report of Mayor.

(a) No later than October 1, 1988, the Mayor shall report to the Council on the continued need for the rent stabilization program.

(b) The report shall be prepared by a person not affiliated with the District government and shall contain:

(1) The number of new and renovated units which have been placed on the rental housing market since July 17, 1985;

(2) The number of new and renovated units it is anticipated will be placed on the rental housing market annually until 1996;

(3) An assessment of the effectiveness of the Tenant Assistance Program; the adequacy of monies appropriated for the program; and the projected costs of the Tenant Assistance Program in the absence of rent stabilization legislation;

(4) The impact of the rent stabilization program on the cost and supply of rental housing;

(5) An assessment of the present rent stabilization program in terms of its being understandable, efficient, inexpensive, equitable, and flexible;

(6) The impact of the present rent stabilization program upon small housing providers compared to large housing providers;

(7) The number of District residents living in substandard housing and their locations;

(8) An assessment of the impact of the proposed civil infractions law on housing code violations, if the law is enacted in a timely manner;

(9) An assessment of the probable impact on the private rental housing market and the present rent stabilization program of the following individual or combination of factors:

(A) Vacancy decontrol;

(B) Luxury decontrol;

(C) Increasing from 4 units to 10 units the maximum rental units exemption under § 42-3502.05(a)(3); and

(D) Tying the rent stabilization program to the amount of family income available for rent; and

(10) Any other information considered appropriate by the drafters of the report.

(July 17, 1985, D.C. Law 6-10, § 220, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2529.1.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3502.01.

References in text. — The “proposed civil infractions law,” referred to in paragraph (b)(8), was enacted as D.C. Law 6-42.

§ 42-3502.21. Certificate of assurance.

(a) Upon the issuance of any building permit for a housing accommodation to which § 42-3502.05(a)(2) or (4) applies after July 17, 1985, the Mayor shall at the request of the recipient of the building permit issue to the recipient thereof concurrently with the building permit a certificate of assurance containing the terms set forth in this section. Within 30 days of written request of the owner of any housing accommodation to which § 42-3502.05(a)(2) or (4) applies, the Mayor shall issue to the owner a certificate of assurance containing the terms set forth in this section.

(b) The certificate of assurance shall provide that in the event that any rental unit in any housing accommodation then existing or thereafter constructed on the property covered by the certificate is ever made subject to §§ 42-3502.05(f) through 42-3502.19, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the owner of the property shall have the right to recover annually from the District of Columbia for so long as the property is used as a housing accommodation, in accordance with subsection (c) of this section, the difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation. The certificate of assurance shall be executed by the Mayor and the recipient and shall obligate the recipient to use the recipient's best efforts to construct a housing accommodation as expeditiously as possible on the property which is the subject thereof if there does not then exist a housing accommodation on the property. Each certificate of assurance shall provide that it shall become null and void in the event that a housing accommodation is not constructed on the property within 5 years of the issuance thereof and shall contain the definitions set forth in § 42-3501.03(1) and (3). The certificate of assurance shall be an irrevocable agreement in recordable form and constitute a covenant running with the land. The Mayor shall review the proposed form of the certificate of assurance with Council's Committee on Consumer and Regulatory Affairs prior to its first use to ensure that the form will be legal, valid and enforceable, contain the terms provided for herein, and otherwise further its intended purpose of stimulating the addition of rental units to the District's housing stock.

(c) The certificate of assurance shall provide that for so long as the property is used as a housing accommodation and is subject to §§ 42-3502.05(f) through 42-3502.19, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the annual difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation shall be recoverable by the owner of the property by (1) taking a credit against any present or future District of Columbia real estate taxes payable by the owner of the property whether on the housing accommodation or other property located in the District of Columbia, or (2) seeking specific performances of the certificate of assurance against the District of Columbia, or damages for the breach thereof, in the

Superior Court of the District of Columbia. If the Mayor considers the credit to be in excess of the amount the owner of the property is entitled to take as a credit hereunder, the Mayor shall notify the owner in writing of the amount of excess credit. If the Mayor and the owner of the property are unable to agree on the amount of the credit, the Mayor shall have the right to sue the owner in the Superior Court of the District of Columbia to recover any excess credit together with interest thereon at the rate of 18% per year from the date that the Mayor filed to recover such excess credit. Notwithstanding any other provision of District of Columbia law, the Mayor shall have no resort to any other remedy for nonpayment of real estate taxes (to the extent such nonpayment arises from a credit claimed hereunder) until a final judgment is rendered in favor of the Mayor in Superior Court of the District of Columbia.

(July 17, 1985, D.C. Law 6-10, § 221, 32 DCR 3089; Apr. 9, 1997, D.C. Law 11-255, § 51(c), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 45-2529.2.

Emergency legislation. — For temporary (90 day) additions, see § 2(g) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31,

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 42-3502.02.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3501.01.

§ 42-3502.22. Disclosure to tenants.

(a) At the written request of a tenant not more than one time each calendar year, a housing provider shall, within 10 business days on a form provided by the Rent Administrator (or in another suitable format until a form is published), provide the amount of each increase in the amount of rent charged for the tenant's rental unit during the preceding 3 years on which the current rent charged is based, including the basis for each increase and, if applicable, the identification of any substantially identical rental unit on which a vacancy increase was based.

(b)(1) At the time a prospective tenant files an application to lease any rental unit, the housing provider shall provide on a disclosure form published by the Rent Administrator (or in another suitable format until a form is published) together with any documents corresponding to each item of information:

- (A) The applicable rent for the rental unit;
- (B) Any tenant petition or petition filed by the housing provider which is pending that could affect the rental unit, including petitions for further rent increases during the following 12 months;
- (C) Any surcharges on rent for the rental unit, including capital improvement surcharges and the expiration date of those surcharges;
- (D) The frequency with which rent increases for the rental unit may be implemented;
- (E) The rent-controlled or exempt status of the housing accommodation, its business license, and a copy of the registration or claim of exemption together with the most recent notice filed pursuant to § 42-3502.05(g)(1)(C);

(F) All copies of housing code violation reports issued by the Department of Consumer and Regulatory Affairs for the housing accommodation or rental unit within the last 12 months, or previously issued reports for violations which have but not been abated;

(G) A pamphlet published by the Rent Administrator that explains in detail using lay terminology the laws and regulations governing the implementation of rent increases and petitions permitted to be filed by housing providers and by tenants;

(H)(i) The amount of any nonrefundable application fee; and

(ii) The amount of any initial security deposit, the interest rate on the security deposit, and the means by which the security deposit is returned to the tenant when the tenant vacates the unit;

(I) Whether the housing accommodation is registered as, or in the process of converting to, a condominium or cooperative or a use that is not a housing accommodation;

(J) The disclosure of ownership information in the registration form required by § 42-3502.05(f) and (g)(1)(C).

(2) The housing provider shall:

(A) Maintain in a publicly accessible area of the housing accommodation (such as a reception desk or management office) a compilation of disclosure forms and documents for each rental unit in the housing accommodation containing the information required by paragraph (1) of this section;

(B) Update the compilation within 30 days of any change in such information;

(C) Give written notice to each tenant of the housing accommodation, on a form published by the Rent Administrator (or in another suitable format until a form is published), that the disclosure forms and documents for the tenant's rental unit are available for inspection, which shall include the location of the disclosure forms in the housing accommodation and a table of contents enumerating the categories of information contained in the compilation required by paragraph (1) of this section;

(D) Make available for the tenant's inspection the disclosure forms and the documents for the tenant's rental unit; and

(E) Within 10 business days after written request by any tenant once per year, provide to the tenant without charge a copy of the disclosure form and such documents for the tenant's rental unit.

(c) The rent for any rental unit shall not be increased if the housing provider:

(1) Willfully violates the provisions of this section; or

(2) Fails to comply within 10 business days of written notice of any failure to comply with the provisions of this section.

(July 17, 1985, D.C. Law 6-10, § 222, as added Aug. 5, 2006, D.C. Law 16-145, § 2(g), 53 DCR 4889.)

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

§ 42-3502.23. Addition to Comprehensive Housing Strategy report.

The Mayor shall include in the reports to the Council pursuant to § 6-1054, analyses of the need, means, and methods of further assisting income qualified elderly tenants, disabled tenants, teachers of the District of Columbia Public Schools or a District of Columbia Public Charter School, and low-income tenants to pay their rent. The report shall consider:

- (1) The income and any other criteria that shall be used to determine which tenants qualify for the program;
- (2) The rent that qualified households shall pay;
- (3) The number and the allocation of units to be included in any set-aside;
- (4) The extent to which the program should incorporate any District affordable housing program and any federal affordable housing program available in the District;
- (5) The reporting requirements which should be imposed on housing providers subject to this subchapter and on qualified tenants to ensure that the program is effective.

(July 17, 1985, D.C. Law 6-10, § 223, as added Aug. 5, 2006, D.C. Law 16-145, § 2(g), 53 DCR 4889.)

Cross references. — Homestead housing preservation, “low-income persons” defined, see § 42-2103.

Housing Finance Agency, assisted housing

projects, eligibility for rent supplements, see § 42-2703.08.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Subchapter III. Tenant Assistance Program.

§ 42-3503.01. Definitions.

For the purpose of this subchapter, the term:

- (1) “Annual adjusted income” means income that remains after excluding:
 - (A) Four hundred eighty dollars (\$480) for each member of the family residing in the household, other than the head of the household or spouse, who is under 18 years of age or who is 18 years of age or older and has a disability or is a full-time student; and
 - (B) Child care expenses to the extent necessary to enable another member of the family to be employed or to further the member’s education.
- (2) “Certificate of eligibility” means a document issued by the Department declaring a family to be eligible for participation in the Tenant Assistance Program and stating the terms and conditions for the family’s participation.
- (3) “Decent, safe, and sanitary housing” means housing which is in substantial compliance with the housing regulations, any other statute or regulation governing the condition of residential premises, and the requirements set forth in this subchapter.
- (4) “Department” means the Department of Housing and Community Development, which is authorized to assist in the administration of the Tenant Assistance Program.

(5) “Eligible family” means an individual or a family residing and domiciled in the District which qualifies as a lower income family at the time it initially receives assistance under the Tenant Assistance Program.

(6) “Fair market rent” means the rent, and all maintenance, management, and other services which would be required to be paid in order to obtain privately owned, decent, safe, and sanitary rental housing of modest nonluxury nature with suitable amenities in the District. Fair market rents as established by the Department shall be published in the D.C. Register and shall vary for dwelling units of varying sizes and types, with differentials for new, rehabilitated, and existing units. For SRO housing the fair market rent shall be in a range from 75% to 100% of the 0-bedroom fair market rent.

(7) Repealed.

(8) “Lower-income family” means a household with a combined annual income in a manner to be determined by the Mayor, whose income does not exceed 80% of the median income for a family in the district, with adjustments for smaller and larger families. The Mayor may refer to income or consumer expenditure data of the United States Census Bureau or the United States Department of Labor to determine median income for the District or Standard Metropolitan Statistical Area (SMSA).

(8A) “Person with a disability” means a person who has a medically determinable mental or physical impairment, including blindness, which prohibits and incapacitates 75% of that person’s ability to move about, to assist himself or herself, or to engage in an occupation.

(9) “Request for lease approval” means a standard form on which the eligible family and the housing provider jointly request the Department to approve a dwelling unit for purposes of tenant assistance. The form shall require the housing provider to state the number of bedrooms in the unit and to certify the most recent rent charged.

(10) “Residing and domiciled” describes a person who resides in the District, pays income tax in the District, whose automobile is registered in the District, and, if a registered voter, votes in the District.

(11) Repealed.

(12) “Tenant assistance contract” means a written contract between the Department and a housing provider, in the form prescribed by the Mayor, in which the Department agrees to make tenant assistance payments to the housing provider (A) on behalf of a specific eligible family; or (B) for specific units to be held for and leased to families eligible for tenant assistance for the duration of the contract.

(July 17, 1985, D.C. Law 6-10, § 301, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(a), (b), 34 DCR 5304; Mar. 17, 1993, D.C. Law 9-237, § 2(a), 40 DCR 617; Aug. 25, 1994, D.C. Law 10-155, § 2(b), 41 DCR 4873; Apr. 24, 2007, D.C. Law 16-305, § 67(c), 53 DCR 6198.)

Section references. — This section is referred to in §§ 42-3501.03 and 42-3503.05.

Prior Codifications. — 1981 Ed., § 45-2531.

Effect of amendments. — D.C. Law 16-

305, in par. (1)(A), substituted “has a disability or is” for “is disabled, handicapped, or”; repealed par. (7), and added par. (8A). Prior to repeal par. (7), read as follows: “(7) ‘Handicapped person’ means a person who has a

medically determinable mental or physical impairment, including blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a), (b) of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 9-237. — Law 9-237, the "Tenant Assistance Program Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-384, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-369 and transmitted to both Houses of Congress for its review. D.C. Law 9-237 became effective on March 17, 1993.

Legislative history of Law 10-155. — For legislative history of D.C. Law 10-155, see Historical and Statutory Notes following § 42-3508.06.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

§ 42-3503.02. Establishment of Tenant Assistance Program; designation of monies.

(a) For the purpose of aiding lower-income families in obtaining a decent place to live, the Mayor shall formulate and administer a Tenant Assistance Program as provided in this subchapter.

(b) There is authorized to be appropriated at least \$15 million for fiscal year 1987 with annual increases in the following fiscal years based upon need and the availability of revenues. Appropriations for the Tenant Assistance Program shall be classified and maintained as a proprietary fund and shall remain available until expended, without regard to fiscal year limitations. No money appropriated for the Tenant Assistance Program shall be expended for any purpose other than making tenant assistance payments and, when necessary, repayable advances for security deposits in accordance with this subchapter.

(c) If in any fiscal year the Mayor finds that tenant assistance payments will exceed available appropriations, the Mayor shall transmit to the Council proposed adjustments to eligibility criteria, income guidelines, or supplement payments to reduce payments under this subchapter to an amount not in excess of available appropriations.

(d) The Mayor is authorized to expend the annual appropriations provided by this section in the following manner:

(1)(A) The Mayor may enter into long-term tenant assistance contracts with housing providers. Payments obligated by long-term contracts may be made on an annual basis during the period of each contract from the annual appropriations for the Tenant Assistance Program. Each contract entered into pursuant to this paragraph shall obligate the housing provider, on an annual basis, for the duration of the contract to offer for lease and to lease a fixed number of rental units, which shall be specified in the contract, to families receiving tenant assistance, regardless of whether the same family leases the same unit throughout the contract period. Each contract shall obligate the Mayor to make tenant assistance payments to the housing provider for the duration of the contract in accordance with the terms of the contract and the

requirements of this subchapter as long as the housing is in substantial compliance with the housing regulations. The contractual obligation of the Mayor shall be backed by the full faith and credit of the District to the same extent that applies to District contracts generally.

(B) In the case of contracts for rental units in existing housing accommodations, the length of the contract may be from 1 to 5 years. In the case of contracts for rental units in newly constructed or rehabilitated housing accommodations, the length of the contract may be from 1 to 15 years, with options to renew in 5-year increments.

(C) Consistent with the requirements of § 42-3508.04(d), distressed properties and new or rehabilitated vacant rental housing receiving assistance pursuant to subchapter VIII of this chapter shall have priority over other properties for the long-term contracts authorized by this paragraph.

(2) Repealed.

(3) The Mayor may expend funds from the annual appropriation to assist eligible families with a current valid lease of a rental unit that qualifies according to the provisions of this chapter. The Department shall announce the availability of the assistance authorized by this paragraph through notice to the District of Columbia Office on Aging, other relevant District agencies, and private organizations representing senior citizens or tenants in general.

(4) The Mayor shall not, by rule or otherwise, establish any set-aside procedure or allocate any fixed portion of Tenant Assistance Program funds or applications to be approved for any specific category of eligible families or any specific type of tenant assistance contract authorized by this subchapter.

(e) The Mayor shall issue rules consistent with this subchapter for the effective and efficient administration of the Tenant Assistance Program. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this subsection shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(July 17, 1985, D.C. Law 6-10, § 302, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § (3)(c)-(e), 34 DCR 5304; Mar. 17, 1993, D.C. Law 9-237, § 2(b), (c), 40 DCR 617.)

Section references. — This section is referred to in § 42-3503.04.

Prior Codifications. — 1981 Ed., § 45-2532.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c)-(e) of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For

legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 9-237. — For legislative history of D.C. Law 9-237, see Historical and Statutory Notes following § 42-3503.01.

Transfer of Functions. — The functions of the Department of Housing and Community Development relating to the Tenant Assistance Program were transferred to the Department of Public and Assisted Housing by Reorganization Plan No. 1 of 1987, effective December 15, 1987.

Editor's notes. — Appropriations approved: Public Law 101-518, 104 Stat. 2227, the Dis-

trict of Columbia Appropriations Act, 1991, the Tenant Assistance Program shall be targeted for the single-room occupancy initiative. provided that up to \$275,000 within the 15 percent set-aside for special programs within

§ 42-3503.03. Authorization to enter into contracts for tenant assistance payments; determination of eligibility; procedure upon determination of eligibility.

(a) The Mayor may enter into contracts to make rental assistance payments to housing providers of rental dwelling units on behalf of eligible families in accordance with this section. Unit A of Chapter 3 of Title 2 shall not apply to the contracts authorized by this subchapter.

(b) Except as otherwise provided in this subsection, the fair market rents applicable to the Tenant Assistance Program shall be the fair market rents established annually by the U.S. Department of Housing and Urban Development ("HUD") for new construction and substantial rehabilitation in the Washington, D.C., market. The Department, by rule, may establish the fair market rents for units in sizes for which there is no fair market rent established by HUD. If the Department, after reviewing the fair market rents established by HUD for the Washington, D.C., market, determines that the amounts do not accurately reflect fair market rents in the District, the Department may, by rule, adjust the amounts. If the proposed fair market rents vary from the fair market rents established by HUD, the Department shall submit a resolution for approval of the proposed fair market rents to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part, within this 45-day review period, the proposed resolution shall be deemed approved.

(c) Applications to participate in the Tenant Assistance Program shall be submitted to the Department and shall be in a form designated by the Department. The Department shall be responsible for verifying the sources of the family's income and gathering information necessary for determining eligibility and the amount of the assistance payment. Priority shall be given to the elderly, individuals with disabilities, single-parent households, and applicants who have completed any employment training course provided by any District agency.

(d) If an applicant is determined by the Department to be eligible and is selected for participation, the applicant shall be given a certificate of eligibility. At the same time, the family shall be given a certificate holder's packet which contains a request for lease approval, a list of properties for rent, information concerning recently completed housing, if any, including the location, and other items the Department determines should be included. In addition, the Department shall provide a full explanation of the following to assist the family in finding a suitable rental unit and to apprise the family and the housing provider of their respective responsibilities:

(1) Family and housing provider responsibilities under the lease contract;

(2) The general locations and characteristics of the neighborhood in which units of suitable quality and price may be found;

(3) Applicable laws and housing standards;

(4) Significant aspects of applicable federal and District law, including fair housing law;

(5) The applicable fair market rent; and

(6) Information on how the Department computes the amount of the tenant assistance payment.

(e) Upon determination of eligibility the Department shall enter on each certificate the smallest unit-size appropriate for the eligible family consistent with the following criteria:

(1) The number of bedrooms indicated as appropriate shall not require more than 2 persons to occupy the same bedroom.

(2) The number of bedrooms indicated as appropriate shall not require persons of the opposite sex other than spouses, except for children under 12 years of age, to occupy the same bedroom.

(3) All single-person households shall be assigned a 0-bedroom unit if 0-bedroom units are available. Where there are no 0-bedroom units available, single-person households shall be assigned a 1-bedroom unit. A single, elderly person or single person with a disability planning to live with an unrelated person essential to his or her care may be assigned a 2-bedroom unit.

(f)(1) The Department shall maintain a system to assure that it will be able to honor all outstanding certificates of eligibility with its funding authorization.

(2) Nothing in this subchapter shall be construed as creating an entitlement to assistance payments in the absence of appropriations sufficient to fund this program.

(g)(1) The certificate of eligibility shall expire at the end of 90 days unless within that time the family submits a completed request for lease approval. If the certificate expires, or is about to expire, the family may submit the certificate to the Department with a request for an extension. The Department may grant 1 or more 60-day extensions to any family that continuously demonstrates good faith efforts to locate a suitable rental unit. Expiration of the certificate shall not preclude the family from filing a new application for another certificate.

(2) If an assisted family notifies the Department that it wishes to obtain another certificate of eligibility for the purpose of moving to another rental unit within the District, the Department shall issue another certificate or process a request for lease approval, unless the Department determines that the housing provider is entitled to payment under § 42-3503.04(d) on account of nonpayment of rent or other amount owed under the lease, and that the family has failed to satisfy any liability.

(h) Owners of rental accommodations in the District shall notify tenants of the existence of the Tenant Assistance Program and shall refer interested parties to the Department for further information.

(July 17, 1985, D.C. Law 6-10, § 303, 32 DCR 3089; Oct. 2, 1987, D.C. Law

7-30, § 3(f)-(i), 34 DCR 5304; Apr. 24, 2007, D.C. Law 16-305, § 67(d), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 38, 55 DCR 6758.)

Section references. — This section is referred to in § 42-3508.04.

Prior Codifications. — 1981 Ed., § 45-2533.

Effect of amendments. — D.C. Law 16-305, in subsec. (c), substituted “individuals with disabilities” for “the handicapped”; and, in subsec. (e)(3), substituted “A single, elderly person or single person with a disability” for “An elderly, handicapped, or disable single person”.

D.C. Law 17-231, in subsec. (e)(2), substituted “other than spouses” for “other than the husband and wife”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f)-(i) of Tenant Assistance Program

Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 42-516.

Short title. — Short title: See Historical and Statutory Notes following § 42-3501.01.

CASE NOTES

In general.

District of Columbia was not estopped from denying liability for tenant assistance payments to landlord who placed tenant in possession without an executed tenant assistance contract; landlord could not have relied upon any oral promise given his imputed knowledge

that execution of tenant assistance contract was necessary before the District was bound to pay; moreover, equities did not favor landlord. D.C. Code 1981, § 45-2533(a). *Chamberlain v. Barry*, 606 A.2d 156, 1992 D.C. App. LEXIS 84 (1992).

§ 42-3503.04. Tenant assistance payments.

(a) *Basic formula.* —

(1) The amount of the tenant assistance payment shall be the amount by which the actual rent or fair market rent applicable to the family, whichever is lower, exceeds 30% of the family's monthly income. Where the head of household is an elderly tenant or tenant with a disability, the amount of the tenant assistance payment shall be the amount by which the actual rent or fair market rent, whichever is lower, exceeds 25% of the family's monthly income. Monthly income is $\frac{1}{12}$ of annual adjusted income. Annual income is the anticipated total income from all sources received by the family head and spouse, even if temporarily absent, and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the Department's initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring, or sporadic such as irregular gifts, scholarships, inheritances, insurance payments, and capital gains. Annual income is also exclusive of income from employment of children, including foster children, under the age of 18 years; payments received for the care of foster children; the value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. §§ 2011-2030); and payments or allowances made under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), and the District of Columbia Low Income Energy Assistance Program.

(2) Annual income includes, but is not limited to:

(A) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(B) The net income from operation of a business or profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(C) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from real or personal property). Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of the assets based on the current passbook savings rate as determined by the Department;

(D) The full amount of periodic payments received from Social Security annuities, insurance policies, retirement funds, pensions, disability or death benefits or other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(E) Welfare assistance;

(F) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;

(G) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the rental unit;

(H) All regular pay, special pay, and allowances of a member of the armed forces, whether or not living in the rental unit, who is head of the family, spouse, or other person whose dependents are residing in the unit; and

(I) Any earned income tax credit to the extent it exceeds income tax liability.

(b) *Applicable fair market rent.* — The Department shall compute the tenant assistance payment for a family entering the Tenant Assistance Program on the most recent published fair market rents on the date of lease approval for the family.

(b-1) *Payment cap.* —

(1) Except in the case of elderly tenants or tenants with a disability, no tenant assistance payment shall exceed 60% of the amount of rent for the recipient's rental unit. In the case of persons receiving tenant assistance payments on and before March 17, 1993, and continuously thereafter, this subsection shall apply 2 years from October 21, 1993.

(2) In the case of persons who are granted Tenant Assistance Program certification after March 17, 1993, if those persons have previously received Tenant Assistance Program subsidies, the subsidies provided those persons shall not exceed 60% of the amount of rent for the recipient's rental unit.

(c) *Rent not capped by payment standard.* — Under the tenant assistance payment computation described in subsections (a) and (b) of this section, the

amount of tenant assistance payment does not increase if the unit rents for more than the applicable fair market rent, but a tenant is not prohibited from renting such a unit.

(d) *No reimbursement of amounts family owes housing provider.* — The Department shall not reimburse the housing provider for the portion of the rent not covered by the tenant assistance payment, damages, or other amounts due under the lease.

(e) *No payments for vacancies.* — If a family moves out, the housing provider shall promptly notify the Department and the Department shall make no additional tenant assistance payments to the housing provider for any month after that in which the family moves. The housing provider may retain the tenant assistance payment for the month in which the family moves.

(f) Repealed.

(g) *Finders-keepers policy.* —

(1) A family with a certificate of eligibility is responsible for finding a rental unit suitable to the family's needs and desires. A family may select the rental unit which it already occupies if the unit qualifies. Upon request, the Department shall assist families in finding units where, because of age, disability, large family size, or other reasons, the family is unable to locate an approvable unit. The Department shall also provide this assistance where the family alleges that illegal discrimination on grounds of race, religion, sex, national origin, age, or disability is preventing it from finding a suitable unit.

(2) Neither in assisting a family in finding a unit nor by any other action shall the Department directly or indirectly reduce the family's opportunity to choose among the available units in the housing market, except in accordance with § 42-3503.02(d).

(July 17, 1985, D.C. Law 6-10, § 304, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(j), 34 DCR 5304; Mar. 17, 1993, D.C. Law 9-237, § 2(d), 40 DCR 6049; Feb. 5, 1994, D.C. Law 10-68, § 39(a), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 38, 41 DCR 5193; Apr. 24, 2007, D.C. Law 16-305, 67(e), 53 DCR 6198.)

Section references. — This section is referred to in § 42-3503.03.

Prior Codifications. — 1981 Ed., § 45-2534.

Effect of amendments. — D.C. Law 16-305, in subsec. (a)(1), substituted "tenant or tenant with a disability" for "or handicapped tenant"; in subsec. (b-1)(1), substituted "tenants or tenants with a disability" for "or handicapped tenants"; and in subsec. (g), substituted "disability" for "handicap".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(j) of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 9-237. — For legislative history of D.C. Law 9-237, see Historical and Statutory Notes following § 42-3503.01.

Legislative history of Law 10-45. — D.C. Law 10-45, the "Tenant Assistance Program Payment Limitation Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-213, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993,

it was assigned Act No. 10-80 and transmitted to both Houses of Congress for its review. D.C. Law 10-45 became effective on October 21, 1993.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

CASE NOTES

In general.

District of Columbia was not estopped from denying liability for tenant assistance payments to landlord who placed tenant in possession without an executed tenant assistance contract; landlord could not have relied upon any oral promise given his imputed knowledge

that execution of tenant assistance contract was necessary before the District was bound to pay; moreover, equities did not favor landlord. D.C. Code 1981, § 45-2533(a). *Chamberlain v. Barry*, 606 A.2d 156, 1992 D.C. App. LEXIS 84 (1992).

§ 42-3503.05. Approval and maintenance of rental units; obligations of families.

(a) Rental units which the Department determines are decent, safe, and sanitary as required by the housing regulations, any other statute or regulation governing the condition of residential premises, and the requirements of this subchapter are eligible for tenant assistance.

(b) The following units are not eligible for tenant assistance as provided by this subchapter:

(1) Housing units receiving rent assistance under any federal housing program, or public housing that is managed by the District government;

(2) Nursing homes, units within the grounds of penal, reformatory, medical and similar public or private institutions, and facilities providing continual psychiatric, medical, or nursing service; or

(3) Units occupied by the housing provider.

(c) As required by the Department, units shall be inspected to determine whether they are decent, safe, and sanitary as set forth in § 42-3503.01(3). Regardless of the number of bedrooms stated on the certificate of eligibility, the Department shall not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family. If the Department determines that the assisted unit occupied by a participating family does not meet the space requirement because of an increase in family size or a change in family composition, the Department shall issue the participating family a new certificate of eligibility. If an acceptable unit is found that is available for occupancy by the family, the Department shall terminate the tenant assistance contract for the original unit in accordance with its terms.

(d) The following maintenance, operation, and inspection requirements shall apply:

(1) The housing provider shall provide all the services, maintenance, and utilities which the housing provider agrees to provide under the contract, subject to abatement of housing assistance payments or other applicable remedies if the housing provider fails to meet these obligations.

(2) A housing provider may collect a security deposit from a family not to exceed 1 month's rent. If the family determines it is unable to pay the security deposit, it may apply to the Department for a repayable advance to cover the difference between the amount the family can afford, as determined by the Department, and the security deposit requested by the housing provider. When the Department decides to provide an advance to the family, the family shall enter into an agreement with the Department for repayment on terms prescribed by the Department. The Department shall establish a reasonable schedule for the repayment to minimize the hardship for the family.

(3) Subject to District law, after the family moves from the unit the housing provider may use the security deposit as reimbursement for any unpaid rent payable by the family or other amounts which the family owes under the lease. The housing provider shall give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the housing provider, the housing provider shall refund promptly to the family the full amount of the unused balance.

(4) The Department shall conduct reexaminations of family income and composition at least annually. The Department shall adjust the amount of each family's tenant assistance payment at the time of the annual reexamination to reflect any changes in family monthly income using the applicable payment or adjustment standard.

(e)(1) A family shall:

(A) Supply any certification, release, information, or documentation the Department determines to be necessary in the administration of the program;

(B) Allow the Department to inspect the rental unit at reasonable times and after reasonable notice;

(C) Notify the Department before vacating the rental unit; and

(D) Use the rental unit solely for residence by the family, and as the family's principal place of residence, and shall not sublease or assign the lease or transfer the unit.

(2) A family shall not:

(A) Own or have any interest in the dwelling unit;

(B) Commit any fraud in connection with the Tenant Assistance Program; and

(C) Receive duplicative assistance under the Tenant Assistance Program and any other federal or District housing assistance program.

(July 17, 1985, D.C. Law 6-10, § 305, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(k), 34 DCR 5304; Feb. 5, 1994, D.C. Law 10-68, § 39(b), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 45-2535.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Rental Housing Act of 1985 Temporary Amendment Act of 1987 (D.C. Law 7-1, May 13, 1987, law notification 34 DCR 3645).

For temporary (225 day) amendment of section, see § 2(k) of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 42-3503.04.

§ 42-3503.06. Continued eligibility.

Sixty days prior to the expiration of any tenant assistance authorized under this subchapter, the Department shall notify the tenant, in writing, that the tenant assistance is about to expire and that the tenant, if eligible and desiring to continue to receive tenant assistance, must reapply within 30 days upon receipt of the notice. The tenant shall reapply by executing under oath or affirmation a statement of continued eligibility on a form approved by the Department and by submitting the form to the Department. Unless the Department determines that the person is not eligible, tenant assistance shall continue for the succeeding 12 months.

(July 17, 1985, D.C. Law 6-10, § 306, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2536.

Legislative history of Law 6-10. — For

legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

§ 42-3503.07. Termination of eligibility.

(a) If, at any time, a tenant receiving tenant assistance fails to satisfy the requirements of this subchapter relating to conditions of eligibility, the tenant shall immediately notify the Department, in writing, of the ineligibility. Tenant assistance shall terminate on the next day thereafter upon which the rent is due.

(b) If, at any time, the Department determines that a tenant receiving tenant assistance is not, or has ceased to be, eligible for tenant assistance, the Department shall notify the tenant and housing provider in writing, setting forth the reasons for the determination. Tenant assistance payments shall terminate on the next day the rent is due occurring at least 30 days after the date the notice is given, unless, within 15 days after the receipt of the notice, the tenant submits to the Department a written statement, under oath or affirmation, including any available supporting documents, asserting the tenant's reasons for alleging continued eligibility. Within 30 days following the receipt of the statement and documents, the Department shall make the final determination of the tenant's eligibility for continued receipt of tenant assistance.

(c)(1) Notwithstanding any other provision of this subchapter, after September 30, 1996, all tenants receiving tenancy assistance shall avail themselves of all opportunities to receive Section 8 or public housing assistance in lieu of tenant assistance.

(2) A tenant who fails to observe the mandates of paragraph (1) of this subsection shall be deemed ineligible for tenant assistance and assistance will be terminated pursuant to subsection (b) of this section.

(July 17, 1985, D.C. Law 6-10, § 307, 32 DCR 3089; Apr. 9, 1997, D.C. Law 11-198, § 403, 43 DCR 4569.)

Prior Codifications. — 1981 Ed., § 45-2537.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 403 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 403 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 403 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 403 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emer-

gency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

CASE NOTES

In general.

Findings of hearing examiner of the Department of Public and Assisted Housing (DPAH) were insufficient to support conclusion that DPAH acted lawfully and reasonably in terminating Tenant Assistance Program (TAP) benefits under tenant fraud provisions; examiner did not make requisite factual finding that recipient herself committed fraud, and how she

did so; evidence that examiner listed to support conclusion that recipient's eligibility was “fraudulently documented” did not clarify whether examiner found that recipient herself was perpetrator of fraud. D.C.Mun. Regs. title 14, §§ 1932, 1936. *Branch v. District of Columbia Dep't of Pub. & Assisted Hous.*, 661 A.2d 1102, 1995 D.C. App. LEXIS 293 (1995).

§ 42-3503.08. Tax exemption.

All monies received by any tenant through the Tenant Assistance Program under this subchapter are exempt from District income taxes payable under Chapter 18 of Title 47.

(July 17, 1985, D.C. Law 6-10, § 308, 32 DCR 3089.)

Cross references. — Gross income and adjusted gross income, see § 47-1803.02.

Prior Codifications. — 1981 Ed., § 45-2538.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Subchapter IV. Revenue.

§ 42-3504.01. Rental unit fee.

(a) Each housing provider required to register under this chapter, including those otherwise exempt from rental control and registration pursuant to § 42-3502.05(a)(3), shall pay a fee of \$21.50 for each rental unit in a housing

accommodation registered by the housing provider. The fee shall be paid annually to the District government at the time the housing provider applies for a basic business license or a renewal of the basic business license; or in the case of a housing accommodation for which no basic business license is required, at the time and in the manner the Commission may determine. The fees shall be deposited in the fund established pursuant to § 42-3131.01(b).

(b) Repealed.

(July 17, 1985, D.C. Law 6-10, § 401, 32 DCR 3089; Sept. 30, 1993, D.C. Law 10-25, § 401, 40 DCR 5489; Oct. 19, 2000, D.C. Law 13-172, § 1202(a), 47 DCR 6308; Dec. 7, 2004, D.C. Law 15-205, § 2092, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-192, § 2172, 53 DCR 6899; Mar. 3, 2010, D.C. Law 18-111, § 2131, 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, §§ 2002, 9033, 58 DCR 6226.)

Cross references. — Housing Finance Agency, assisted housing projects, eviction procedures, see § 42-2703.08.

Prior Codifications. — 1981 Ed., § 45-2541.

Effect of amendments. — D.C. Law 13-172 added the proviso at the end of the third sentence.

D.C. Law 15-205 substituted “\$16” for “\$15” and substituted “; provided, that a portion of fees collected shall be deposited in a special account to fund a tenant ombudsman and a housing provider ombudsman and an Advisory Neighborhood Commission liaison.” for “; provided, that fees collected during fiscal year 2001 shall be deposited in the fund established by § 6-711.01 to be used for the purposes of the fund.”

D.C. Law 16-192 substituted “\$17” for “\$16”; deleted “tenant ombudsman and a” following “special account to fund a”; and substituted “liaison; provided further, that a portion of fees collected shall be deposited in a special account for use by the Office of the Chief Tenant Advocate.” for “liaison.”

D.C. Law 18-111 rewrote the section, which had read as follows: “Each housing provider required to register under this chapter, including those otherwise exempt from rental control and registration pursuant to § 42-3502.05(a)(3), shall pay a fee of \$17 for each rental unit in a housing accommodation registered by the housing provider. The fee shall be paid annually to the District government at the time the housing provider applies for a business license or a renewal of the license; or in the case of a housing accommodation for which no license is required, at the time and in the manner the Commission may determine. Fees shall be deposited in a timely manner in depositories designated by the District government for those purposes; provided, that a portion of fees collected shall be deposited in a special account to fund a housing provider ombudsman and an Advisory Neighborhood Commission li-

aision; provided further, that a portion of fees collected shall be deposited in a special account for use by the Office of the Chief Tenant Advocate.”

D.C. Law 19-21, in subsec. (a), substituted “basic business license” for “business license”, “the basic business license” for “the license”, “no license” for “no basic business license”, and “The fees shall be deposited in the fund established pursuant to § 42-3131.01(b).” for “Fees shall be deposited in a timely manner in depositories designated by the District government for those purposes; provided, that a portion of fees collected shall be deposited in the fund established by subsection (b) of this section to fund a housing provider ombudsman and an Advisory Neighborhood Commission liaison; provided further, that a portion of fees collected from the prior fiscal year shall be deposited in the fund established by subsection (b) of this section for use by the Office of the Chief Tenant Advocate.”; and repealed subsec. (b), which had read as follows: “(b) There is established as a nonlapsing fund the Office of the Chief Tenant Advocate Rental Accommodations Fee Fund (‘Fund’). All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 401 of Omnibus Budget Support Temporary Act of 1993 (D.C. Law 10-11, August 6, 1993, law notification 40 DCR 6213).

Emergency legislation. — For temporary (90-day) amendment of section, see § 1202(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1202(a) of the Fiscal Year 2001

Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2092 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2092 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2172 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2172 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2172 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2131 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2131 of Fiscal Year Budget Support Congressional Review Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 10-25. — D.C. Law 10-25, the “Omnibus Budget Support Act of 1993,” was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed

by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 42-1103.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 42-903.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 42-2802.

Short title. — Short title of subtitle H of title II of Law 15-205: Section 2091 of D.C. Law 15-205 provided that subtitle H of title II of the act may be cited as the Tenant and Housing Provider Ombudsmen Amendment Act of 2004.

Short title: Section 2171 of D.C. Law 16-192 provided that subtitle N of title II of the act may be cited as the “Office of the Chief Tenant Advocate Funding Act of 2006”.

Short title: Section 2130 of D.C. Law 18-111 provided that subtitle N of title II of the act may be cited as the “Rental Unit Fee Amendment Act of 2009”.

Short title: Section 2001 of D.C. Law 19-21 provided that subtitle A of title II of the act may be cited as “Housing Business License Rental Unit Fee Clarification Amendment Act of 2011”.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

Subchapter V. Evictions; Retaliatory Action; and Other Matters.

§ 42-3505.01. Evictions.

(a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant’s lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent

Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

(b) A housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.

(c) A housing provider may recover possession of a rental unit where a court of competent jurisdiction has determined that the tenant, or a person occupying the premises with or in addition to the tenant, has performed an illegal act within the rental unit or the housing accommodation. The housing provider shall serve on the tenant a 30-day notice to vacate. The tenant may be evicted only if the tenant knew or should have known that an illegal act was taking place.

(c-1)(1) It shall be a defense to an action for possession under subsections (b) or (c) of this section that the tenant is a victim, or is the parent or guardian of a minor victim, of an intrafamily offense or actions relating to an intrafamily offense, as defined in § 16-1001(8), if the Court determines that the intrafamily offense, or actions relating to the intrafamily offense, are the basis for the notice to vacate.

(2) If, as a result of the intrafamily offense or the actions relating to the intrafamily offense that is the basis for the notice to vacate, the tenant has received a temporary or civil protection order ordering the respondent to vacate the home, the court shall not enter a judgment for possession.

(3) If, as a result of the intrafamily offense or the actions relating to the intrafamily offense that is the basis for the notice to vacate, the tenant provides to the court a copy of a police report written within the preceding 60 days or has filed for but has not received a temporary or civil protection order ordering the respondent to vacate the home, the court shall have the discretion not to enter a judgment for possession under this subchapter.

(d) A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person's immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of action to recover possession of the rental unit in instances arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit. A stockholder of a cooperative housing association with a right of possession in a rental unit may exercise the rights of a natural person with a freehold interest under this subsection.

(e) A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person, so long as the housing

provider has notified the tenant in writing of the tenant's right and opportunity to purchase as provided in Chapter 34 of this title. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider's action to recover possession of the rental unit. No person shall demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.

(f)(1)(A) A housing provider may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied, so long as:

(i) The plans for the alterations or renovations have been filed with the Rent Administrator and the Chief Tenant Advocate;

(ii) The tenant has had 21 days after receiving notice of the application to submit to the Rent Administrator and to the Chief Tenant Advocate comments on the impact that an approved application would have on the tenant or any household member, and on any statement made in the application;

(iii) An inspector from the Department of Consumer and Regulatory Affairs has inspected the housing accommodation for the accuracy of material statements in the application and has reported his or her findings to the Rent Administrator and the Chief Tenant Advocate;

(iv) On or before the filing of the application, the housing provider has given the tenant:

(I) Notice of the application;

(II) Notice of all tenant rights;

(III) A list of sources of technical assistance as published in the District of Columbia Register by the Mayor;

(IV) A summary of the plan for the alterations and renovations to be made; and

(V) Notice that the plan in its entirety is on file and available for review at the office of the Rent Administrator, at the office of the Chief Tenant Advocate, and at the rental office of the housing provider; and

(v) The Rent Administrator, in consultation with the Chief Tenant Advocate, has determined in writing:

(I) That the proposed alterations and renovations cannot safely or reasonably be made while the rental unit is occupied;

(II) Whether the alterations and renovations are necessary to bring the rental unit into compliance with the housing code and the tenant shall have the right to reoccupy the rental unit at the same rent; and

(III) That the proposal is in the interest of each affected tenant after considering the physical condition of the rental unit or the housing accommodation and the overall impact of relocation on the tenant.

(B) As part of the application under this subsection, a housing provider shall submit to the Rent Administrator for review and approval, and to the Chief Tenant Advocate, the following plans and documents:

(i) A detailed statement setting forth why the alterations and reno-

vations are necessary and why they cannot safely or reasonably be accomplished while the rental unit is occupied;

(ii) A copy of the notice that the housing provider has circulated informing the tenant of the application under this subsection;

(iii) A draft of the notice to vacate to be issued to the tenant if the application is approved by the Rent Administrator;

(iv) A timetable for all aspects of the plan for alterations and renovations, including:

(I) The relocation of the tenant from the rental unit and back into the rental unit;

(II) The commencement of the work, which shall be within a reasonable period of time, not to exceed 120 days, after the tenant has vacated the rental unit;

(III) The completion of the work; and

(IV) The housing provider's submission to the Rent Administrator and the Chief Tenant Advocate of periodic progress reports, which shall be due at least once every 60 days until the work is complete and the tenant is notified that the rent unit is ready to be reoccupied;

(v) A relocation plan for each tenant that provides:

(I) The amount of the relocation assistance payment for each unit;

(II) A specific plan for relocating each tenant to another unit in the housing accommodation or in a complex or set of buildings of which the housing accommodation is a part, or, if the housing provider states that relocation within the same building or complex is not practicable, the reasons for the statement;

(III) If relocation to a rental unit pursuant to sub-sub-subparagraph (II) of this sub-subparagraph is not practicable, a list of units within the housing provider's portfolio of rental accommodations made available to each dispossessed tenant, or, where the housing provider asserts that relocation within the housing provider's portfolio of rental accommodations is not practicable, the justification for such assertion;

(IV) If relocation to a rental unit pursuant to sub-sub-subparagraph (II) or (III) of this sub-subparagraph is not practicable, a list for each tenant affected by the relocation plan of at least 3 other rental units available to rent in a housing accommodation in the District of Columbia, each of which shall be comparable to the rental unit in which the tenant currently lives; and

(V) A list of tenants with their current addresses and telephone numbers.

(C) The Chief Tenant Advocate, in consultation with the Rent Administrator, shall:

(i) Within 5 days of receipt of the application, issue a notice, which shall include the address and telephone number of the Office of the Chief Tenant Advocate, to each affected tenant stating that the tenant:

(I) Has the right to review or obtain a copy of the application, including all supporting documentation, at the rental office of the housing provider, the Office of the Chief Tenant Advocate, or the office of the Rent Administrator;

(II) Shall have 21 days in which to file with the Rent Administrator and serve on the housing provider comments upon any statement made in the application, and on the impact an approved application would have on the tenant or any household member; and

(III) May consult the Office of the Chief Tenant Advocate with respect to ascertaining the tenant's legal rights, responding to the application or to any ancillary offer made by the housing provider, or otherwise safeguarding the tenant's interests;

(ii) At any time prior to or subsequent to the Rent Administrator's approval of the application, make such inquiries as the Chief Tenant Advocate considers appropriate to determine whether the housing provider has complied with the requirements of this subsection and whether the interests of the tenants are being protected, and shall promptly report any findings to the Rent Administrator; and

(iii) Upon the Rent Administrator's approval of the application:

(I) Maintain a registry of the affected tenants, including their subsequent interim addresses; and

(II) Issue a written notice, which shall include the address and telephone number of the Office of the Chief Tenant Advocate, to each affected tenant that notifies the tenant of the right to maintain his or her tenancy and the need to keep the Chief Tenant Advocate informed of interim addresses;

(D) The housing provider shall serve on the tenant a 120-day notice to vacate prior to the filing of an action to recover possession of the rental unit that shall:

(i) Notify the tenant of the tenant's rights under this subsection, including the absolute right to reoccupy the rental unit, the right to reoccupy the rental unit at the same rate if the Rent Administrator has determined that the alterations or renovations are necessary to bring the rental unit into substantial compliance with the housing regulations, and the right to relocation assistance under the provisions of subchapter VII of this chapter;

(ii) Include a list of sources of technical assistance as published in the District of Columbia Register by the Mayor; and

(iii) Include a copy of the notice issued by the Chief Tenant Advocate pursuant to paragraph (1)(C)(iii)(II) of this subsection.

(E) Within 5 days of the completion of alterations and renovations, the housing provider shall provide notice, by registered mail, return receipt requested, to the tenant, the Rent Administrator, and the Chief Tenant Advocate that the rental unit is ready to be occupied by the tenant.

(F) Any notice required by this section to be issued to the tenant by the housing provider, the Rent Administrator, or the Chief Tenant Advocate shall be published in the languages as would be required by § 2-1933(a).

(2) Immediately upon completion of the proposed alterations or renovations, the tenant shall have the absolute right to reoccupy the rental unit. A tenant displaced by actions under this subsection shall continue to be a tenant of the rental unit as defined in § 42-3401.03(17), for purposes of rights and remedies under Chapter 34 of this title, until the tenant has waived his or her rights in writing. Until the tenant's right to reoccupy the rental unit has

terminated, the housing provider shall serve on the tenant any notice or other document regarding the rental unit as required by any provision of Chapter 34 of this title, this chapter, or any other law or regulation, except that service shall be made by first-class mail at the address identified as the tenant's interim address pursuant to paragraph (1)(C)(iii) of this subsection.

(3) Where the renovations or alterations are necessary to bring the rental unit into substantial compliance with the housing regulations, the tenant may rerent at the same rent and under the same obligations that were in effect at the time the tenant was dispossessed, if the renovations or alterations were not made necessary by the negligent or malicious conduct of the tenant.

(4) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(5) Prior to the date that the tenant vacates the unit, the Rent Administrator shall rescind the approval of any application under this subsection upon determining that the housing provider has not complied with this subsection.

(6) If, after the tenant has vacated the unit, the housing provider fails to comply with the provisions of this subsection, the aggrieved tenant or a tenant organization authorized by the tenant may seek enforcement of any right or provision under this subsection by an action in law or equity. If the aggrieved tenant or tenant organization prevails, the aggrieved tenant or tenant organization shall be entitled to reasonable attorney's fees. In an equitable action, bond requirements shall be waived to the extent permissible under law or court rule.

(g)(1) A housing provider may recover possession of a rental unit for the purpose of immediately demolishing the housing accommodation in which the rental unit is located and replacing it with new construction, if a copy of the demolition permit has been filed with the Rent Administrator, and, if the requirements of subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 180-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(h)(1) A housing provider may recover possession of a rental unit for the purpose of immediate, substantial rehabilitation of the housing accommodation if the requirements of § 42-3502.14 and subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under subchapter VII of this chapter.

(2) Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to rerent the rental unit immediately upon the completion of the substantial rehabilitation.

(3) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(i)(1) A housing provider may recover possession of a rental unit for the immediate purpose of discontinuing the housing use and occupancy of the rental unit so long as:

(A) The housing provider serves on the tenant a 180-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter;

(B) The housing provider shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(C) The housing provider shall not resume any housing or commercial use of the unit for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(D) The housing provider shall not resume any housing use of the unit other than rental housing;

(E) Upon resumption of the housing use, the housing provider shall not rent the unit at a greater rent than would have been permitted under this chapter had the housing use not been discontinued;

(F) The housing provider shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation, such as address and number of units, the reason for the discontinuance of use, and future plans for the property;

(G) If the housing provider desires to resume a rental housing use of the unit, the housing provider shall notify the Rent Administrator who shall determine whether the provisions of this paragraph have been satisfied; and

(H) The housing provider shall not demand or receive rent for any rental unit which the housing provider has repossessed under this subsection for a 12-month period beginning on the date the housing provider recovered possession of the rental unit.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(j) In any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 42-3402.06(c).

(k) Notwithstanding any other provision of this section, no housing provider shall evict a tenant on any day when the National Weather Service predicts at 8:00 a.m. that the temperature at the National Airport weather station will fall below 32 degrees fahrenheit or 0 degrees centigrade within the next 24 hours.

(k-1) Subsection (k) shall not apply:

(1) Where, in accordance with and as provided in subsection (c) of this section, a court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation;

(2) Where a court of competent jurisdiction has made a specific finding that the tenant's actions or presence causes undue hardship on the health, welfare, and safety of other tenants or immediate neighbors; or

(3) Where a court of competent jurisdiction has made a specific finding that the tenant has abandoned the premises.

(l) Expired.

(m) This section shall not apply to privately-owned rental housing or housing owned by the federal or District government with regard to drug-related evictions under subchapter I of Chapter 36 of this title.

(n)(1) If the occupancy of a tenant has been or will be terminated by a placard placed by the District government in accordance with section 103 of Title 14 of the District of Columbia Municipal Regulations for violations of Title 14 of the District of Columbia Municipal Regulations that threaten the life, health, or safety of the tenant, the tenancy shall not be deemed terminated until the unit has been offered for reoccupation to the tenant after the date that physical occupancy ceased.

(2) The Mayor shall maintain a registry of the persons, including their subsequent interim addresses, who were tenants at the time the building was placarded.

(3) At the time of the placarding, the Mayor shall provide a written notice to the tenants of the right to maintain their tenancy and the need to keep the Mayor informed of interim addresses. The notice shall contain the address and telephone number of the office maintaining the registry.

(4) Any notice required under this subchapter shall be effective when sent to the tenant at the address maintained in the registry.

(o) [Not funded]

(p) No writ of restitution subject to this section shall be executed without at least 3 days notice following the order.

(July 17, 1985, D.C. Law 6-10, § 501, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(g), 33 DCR 7836; June 13, 1990, D.C. Law 8-139, § 11, 37 DCR 2645; Aug. 26, 1994, D.C. Law 10-164, § 2, 41 DCR 4889; Apr. 29, 1998, D.C. Law 12-86, title IX, § 901, 45 DCR 1172; D.C. Law 13-172, § 1312, 47 DCR 6308; Apr. 27, 2001, D.C. Law 13-281, § 301, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, §§ 31, 32(a), 49 DCR 3140; June 22, 2006, D.C. Law 16-140, § 2(a), 53 DCR 3686; Mar. 14, 2007, D.C. Law 16-273, 2(b), 54 DCR 859; Apr. 15, 2008, D.C. Law 17-146, § 2, 55 DCR 2554; Mar. 25, 2009, D.C. Law 17-353, § 231, 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-368, § 4(h)(1), 56 DCR 1338; Mar. 3, 2010, D.C. Law 18-111, §§ 2182, 7039, 57 DCR 181.)

Cross references. — Housing accommodation conversion prerequisites and exemptions, persons with standing, see § 42-3402.02.
Section references. — This section is re-

ferred to in §§ 8-231.03, 42-2857.01, 42-3401.04, 42-3507.01, 42-3507.02, 42-3509.02, and 42-3602.

Prior Codifications. — 1981 Ed., § 45-2551.

Effect of amendments. — D.C. Law 13-172 added subsec. (l).

D.C. Law 13-281 added subsec. (n).

D.C. Law 14-213, in subsec. (n), validated a previously made technical correction.

D.C. Law 16-140, added pars. (f)(5) and (f)(6) and rewrote pars. (f)(1) and (f)(2).

D.C. Law 16-273 added subsec. (c-1).

D.C. Law 17-146 added subsections. (o) and (p).

D.C. Law 17-353 validated a previously made technical correction in subsec. (p).

D.C. Law 17-368, in subsec. (c-1)(1), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

D.C. Law 18-111, in subsections. (o)(1)(B) and (10), substituted “Department of Housing and Community Development” for “Department of Human Services”; and rewrote subsec. (o)(2), which had read as follows: “(2) This subsection shall be subject to the availability of funds.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Rental Housing Act of 1985 Frigid Temperature Temporary Amendment Act of 1993 (D.C. Law 10-2, May 14, 1993, law notification 40 DCR 3403).

For temporary (225 day) amendment of section, see § 2 of Rental Housing Act of 1985 Frigid Temperature Temporary Amendment Act of 1994 (D.C. Law 10-97, March 23, 1994, law notification 40 DCR 1812.)

For temporary (225 day) amendment of section, see § 4 of Real Property Tax Reassessment Temporary Amendment Act of 1998 (D.C. Law 12-125, June 10, 1998, law notification 45 DCR 5883).

For temporary (225 day) amendment of section, see § 4 of Real Property Tax Reassessment and Cold Weather Eviction Temporary Act of 1999 (D.C. Law 13-1, May 20, 1999, law notification 46 DCR 5301).

For temporary (225 day) amendment of section, see § 2 of Tenant Protection Temporary Amendment Act of 2000 (D.C. Law 13-158, September 16, 2000, law notification 47 DCR 8064).

For temporary (225 day) amendment of section, see § 2 of Tenant Evictions Temporary Amendment Act of 2006 (D.C. Law 16-76, April 4, 2006, law notification 53 DCR 3335).

Emergency legislation. — For temporary amendment of section, see § 2 of the Rental Housing Act of 1985 Winter of 1994 Emergency Amendment Act of 1994 (D.C. Act 10-179, January 25, 1994, 41 DCR 520).

For temporary repeal of the Rental Housing Act of 1985 Freezing Temperature Emergency Amendment Act of 1993, effective December 16, 1993 (D.C. Act 10-161; 40 DCR 8874), see § 3 of

the Rental Housing Act of 1985 Winter of 1994 Emergency Amendment Act of 1994 (D.C. Act 10-179, January 25, 1994, 41 DCR 520).

For temporary amendment of section, see § 3 of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

For temporary amendment of section, see § 4 of the Real Property Tax Reassessment Second Emergency Act of 1997 (D.C. Act 12-244, January 13, 1998, 45 DCR 652).

For temporary amendment of section, see § 4 of the Real Property Tax Reassessment Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-293, February 27, 1998, 45 DCR 1758).

For temporary amendment of section, see § 4 of the Real Property Tax Reassessment and Cold Weather Eviction Emergency Amendment Act of 1999 (D.C. Act 13-18, February 17, 1999, 46 DCR 2354).

For temporary (90-day) amendment of section, see § 2 of the Tenant Protection Emergency Amendment Act of 2000 (D.C. Act 13-328, May 9, 2000, 47 DCR 4347).

For temporary (90-day) amendment of section, see § 1312 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) amendment of section, see § 2 of the Tenant Protection Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-411, August 14, 2000, 47 DCR 7285).

For temporary (90 day) amendment of section, see § 1312 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of Tenant Evictions Emergency Amendment Act of 2005 (D.C. Act 16-244, December 22, 2005, 53 DCR 268).

For temporary (90 day) amendment of section, see § 2 of Tenant Evictions Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-327, March 23, 2006, 53 DCR 2582).

For temporary (90 day) amendment of section, see §§ 2182, 7039 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 2182, 7039 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-3502.05.

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see Historical and Statutory Notes following § 42-3631.

Legislative history of Law 10-164. — Law 10-164, the “Rental Housing Act of 1985 Freezing Temperature Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-492, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-277 and transmitted to both Houses of Congress for its review. D.C. Law 10-164 became effective on August 26, 1994.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 16-140. — Law 16-140, the “Tenant Evictions Reform Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-556 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 26, 2006, it was assigned Act No. 16-369 and transmitted to both Houses of Congress for its review. D.C. Law 16-140 became effective on June 22, 2006.

Legislative history of Law 16-273. — Law 16-273, the “Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006,” was introduced in

Council and assigned Bill No. 16-703, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-629 and transmitted to both Houses of Congress for its review. D.C. Law 16-273 became effective on March 14, 2007.

Legislative history of Law 17-146. — Law 17-146, the “Evictions with Dignity Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-61 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-312 and transmitted to both Houses of Congress for its review. D.C. Law 17-146 became effective on April 15, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 42-1103.

Legislative history of Law 17-368. — Law 17-368, the “Intrafamily Offenses Act of 2008,” was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Expiration of Law 8-139. — Section 12(b) of D.C. Law 8-139 provided that the act shall expire 10 years after the effective date of the act. D.C. Law 8-139 became effective on June 13, 1990.

Editor’s notes. — Subsection (o)(2), added by Law 17-146 states that this subsection shall not apply until its fiscal effect is included in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of subsection (o)(2), added by Law 17-146, has not been included in an approved budget and financial plan. Therefore, the provisions of subsection (o), enacted by Law 17-146, are not in effect.

CASE NOTES

ANALYSIS

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Acceptance of rent after notice to quit.

Landlord's agreement, after 90-day notice to vacate premises was given under Rental Housing Act of 1985 and before 90-day period had expired, to consider tenant's offer to buy premises did not have effect of canceling 90-day notice; unambiguous statute contained no mention of waiver of 90-day period if landlord considers tenant's offer to purchase rental unit, and common law rule that acceptance of rent after giving of notice to vacate amounts to waiver of right to demand possession was not applicable because there was no evidence rent was accepted for period beyond 90 day period, or that landlord accepted tenant's offer to purchase. *Wright v. Thomas D. Walsh, Inc.*, 856 A.2d 1108, 2004 D.C. App. LEXIS 414 (2004).

Landlord, in accepting rent from holdover tenant, waived notice to quit and waived alleged overcrowding breach pertaining to prior rental period, absent governing position in lease and absent landlord's disclaimer of intention to accept tendered rent as such or expression of his intention to reserve right, under notice to quit, to terminate lease. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Although Rental Housing Act of 1980 creates, for all residential rental property in District of Columbia, tenancies of term of years, or periodic tenancies, terminable only on occurrence of event specified by statute, common-law rule applies that receipt of rent by landlord after notice to quit amounts to waiver of right to demand possession under such notice unless it is clear from all circumstances that landlord did not by accepting rent from holdover tenant intend to waive "expressed intention to enforce the lease." D.C. Code 1981, §§ 45-1501 to 45-1597 (repealed). *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Landlord who sends notice to quit may reserve right to continue to receive rent without waiving such notice. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Accord and satisfaction.

Residential landlord's act of cashing monthly rent checks in amount of \$1,488 for all months

during which rent increase to \$1,561 was in effect amounted to accord and satisfaction, and thus, landlord was not entitled to past-due rent for those months; there was genuine dispute as to what amount of rent month-to-month tenant was required to pay, with tenant demanding that he be permitted to continue paying \$1,488 per month, tenant communicated his position through correspondence with landlord and continued to pay only \$1,488 per monthly, and landlord's continued cashing of checks permitted finding that landlord cashed checks with understanding that tenant tendered \$1,488 as rent payments in full. *Double H Hous. Corp. v. David*, 947 A.2d 38, 2008 D.C. App. LEXIS 96 (2008).

Admissibility of evidence.

Where housing regulation violations are asserted by a tenant, and eviction action involving rent-controlled premises is based on the continual failure to pay the rent due in a timely manner, such violations cannot be irrelevant to the question of what rent was in fact due, that is, the rent to which the housing provider was entitled. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

In most eviction actions involving claims of a tenant's failure to cure a violation of an obligation of tenancy unrelated to rent payment after receiving the requisite 30-day notice to quit, pursuant to rent control law, the existence of housing regulation violations will be irrelevant, except in cases of claims of retaliatory eviction. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

Residential landlord's alleged violations of housing regulations were relevant, in action for eviction, to determination of whether tenant's continuous nonpayment of rent constituted violation of obligation of tenancy other than nonpayment of rent within meaning of rent control law; evidence of alleged housing violations was necessary to determine what rent, in fact, was due. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

Construction and application.

Public housing tenant's statutory right to cure lease violations was not limited to violations of nuisance variety that did not rise to level of criminal activity threatening safety of other tenants. *Pratt v. D.C. Hous. Auth.*, 942 A.2d 656, 2008 D.C. App. LEXIS 80 (2008).

Statutory eviction restrictions are only part of a comprehensive legislative scheme to protect rights of tenants and therefore must be construed liberally. D.C. Code 1981, § 45-1561. *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

In context of statutory eviction restrictions, "landlord," "tenant" and "rental unit" are not to be understood solely according to technical precepts of real property laws; rather, terms must

be interpreted by reference to the more ordinary usage and purpose of statute to protect from evictions persons who have been renting apartments and who continue to pay rent. D.C. Code 1981, §§ 45-1503, 45-1503(12, 27, 30), 45-1561, 45-1561(a). *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

Subsection of statutory eviction restriction prohibiting eviction in most cases even though lease agreement has expired so long as tenant continues to pay rent to which landlord is entitled does not restrict coverage to cases of contractual relationship between landlord and tenant, but, rather, in context of rent control statutes, was intended to also cover money payable by tenant for use and occupancy of particular unit after foreclosure. D.C. Code 1981, § 45-1561. *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

Continuances.

Trial court did not abuse its discretion or violate tenant's due process rights in denying her request to retain counsel and contest landlord's action for possession based on 90-day notice to vacate which was tantamount to request for continuance. U.S. Const. Amends. 5, 14; *Landlord and Tenant Rule 12. Wahl v. Watkis*, 491 A.2d 477, 1985 D.C. App. LEXIS 378 (1985).

Even if tenant requested continuance of landlord's possession action, trial court did not abuse its discretion in denying continuance where tenant had sufficient prior notice of hearing and opportunity to consult with counsel if she so wished. U.S. Const. Amends. 5, 14; *Landlord and Tenant Rule 12. Wahl v. Watkis*, 491 A.2d 477, 1985 D.C. App. LEXIS 378 (1985).

Damages.

Under District of Columbia law, lessor was not precluded from seeking damages under the terms of a commercial lease upon the termination of the lease for nonpayment of rent; the termination of the leasehold interest did not have the effect of rendering the damages provision of the lease inoperable or limit the unexpired term for which damages were available to the five-day notice period. D.C. Code 1981, §§ 16-1501, 45-2551(b). *Lennon v. United States Theatre Corp.*, 920 F.2d 996, 1990 U.S. App. LEXIS 21002 (C.A.D.C. 1990).

The damages in a particular wrongful eviction case may be small or even nominal in amount; this determination must be left to the trier of fact. *Henson v. Prue*, 810 A.2d 912, 2002 D.C. App. LEXIS 669 (2002).

Although the law presumes that some damages follow from a wrongful eviction, the burden of proving the amount of such damages remains squarely on the tenant. *Henson v.*

Prue, 810 A.2d 912, 2002 D.C. App. LEXIS 669 (2002).

Resident's testimony that tenant had agreed to leave voluntarily within 90 days of residents' vote to ask him to do so, that landlord told tenant that he would have alternative accommodations available by then, and that tenant simply refused to honor his promise to move out, when 90 days had elapsed, reasonably supported finding that any inconvenience suffered by tenant, when landlord wrongfully changed locks, was largely of his own making, and, therefore, could fairly have supported award of nominal damages only. *Henson v. Prue*, 810 A.2d 912, 2002 D.C. App. LEXIS 669 (2002).

Depositions and discovery.

In action for possession, landlord was liable for attorney fees and expenses with respect to tenant's motion to compel discovery, where landlord had adequate opportunity to oppose portion of motion specifically requesting award of expenses, but failed to do so. Civil Rule 37(a)(4). *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

In action for possession, landlord was required to answer or face sanctions for failure to do so with respect to interrogatories concerning tenant's complaints and landlord's responses since inception of tenancy, as such would relate to defense of retaliatory eviction; assertion that prior default judgment for possession precluded tenant from asserting counterclaim for overpayment of rent based on earlier housing code violations was not substantial justification for refusing to answer such interrogatories. Civil Rules 26(b)(1), 37(a)(4). *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Eviction in contemplation of sale.

Subsection of statute restricting evictions prohibits evictions in contemplation of sale except where owner has written contract to sell housing accommodation to purchaser who intends to occupy premises immediately for own personal use, and even then, owner must first have offered tenant opportunity to purchase property himself. D.C. Code 1981, § 45-1561(e). *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

Federal preemption.

Expressions of opinion by officials of Department of Housing and Urban Development governing Secretary's acceptance of occupied conveyance of property after foreclosure should be interpreted to preempt state law did not constitute sufficient grounds for preemption of District of Columbia law precluding eviction of tenants for their refusal to sign written HUD lease. D.C. Code 1981, § 45-1561(a); National Housing Act, § 204(g), as amended, 12 U.S.C.

§ 1710(g). *Rowe v. Pierce*, 622 F. Supp. 1030, 1985 U.S. Dist. LEXIS 13167 (1985).

Federal statute providing that any criminal activity in federally subsidized public housing that threatens the safety of other tenants is cause for termination of tenancy, and federal regulations implementing statute's policy, do not require the eviction of any tenant, but rather entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the seriousness of the offending action and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the offending action, though the regulations also do not require a landlord to consider any particular factors before instituting eviction proceedings. *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apts.*, 890 A.2d 249, 2006 D.C. App. LEXIS 9 (2006).

Landlord was not required, after a fatal shooting occurred and loaded shotgun was found in unit rented to tenant under federal rental-assistance program, to provide tenant with a cure notice before it instituted eviction proceedings, even if cure provision in Rental Housing Act applied and tenant was otherwise entitled to correct the unlawful possession of a loaded shotgun, as enforcement of Act's cure provision would frustrate federal statute and regulations governing tenant's lease, and provision was thus pre-empted under implied or conflict pre-emption; federal statute provided that any criminal activity in subsidized housing that threatened the safety of other tenants was cause for termination of tenancy, and federal regulations implementing statute's policy required leases to allow landowners to terminate tenancies for such activities without providing tenants with a cure period. *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apts.*, 890 A.2d 249, 2006 D.C. App. LEXIS 9 (2006).

Automatic stay arising from bankruptcy petition by landlord's shareholder applied to tenant's suit against shareholder and landlord for wrongful eviction and conversion of tenant's personal property, even though the property at issue was not part of bankruptcy estate. *Jones v. Cain*, 804 A.2d 322, 2002 D.C. App. LEXIS 438 (2002).

Pro se litigant's failure to inform trial court or opponent of his bankruptcy petition did not provide equitable basis for exception to automatic stay for suit arising out of landlord-tenant dispute; since nothing indicated that the litigant attempted to exploit the stay to obtain an unfair advantage or that the delay in notifying opponent and court was willful, rather than merely careless, equity did not compel an exception to the stay. *Jones v. Cain*, 804 A.2d 322, 2002 D.C. App. LEXIS 438 (2002).

Grounds for eviction.

Doctrines of *res judicata* and collateral estop-

pel did not apply to bar landlord's action for writ of possession against tenant under Rental Housing Act based on nonpayment of rent after trial court had issued judgment in prior action for ejectment that tenant who held over after foreclosure sale had right of occupancy pursuant to terms of lease with original owner; prior case determined tenant's rights to remain possession under lease following landlord's purchase of property in foreclosure sale, and did not require determination of what tenant's obligations were to landlord. *Molla v. Sanders*, 981 A.2d 1197, 2009 D.C. App. LEXIS 466 (2009).

Housing landlord subject to statute governing evictions may not terminate month-to-month tenancy under notice to quit statute without giving valid statutory reason. D.C. Code 1981, §§ 45-1402, 45-2551, 45-2551(b). *Cormier v. McRae*, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

Enforcement of residential apartment lease covenant restricting occupants of apartment subject to landlord's written consent was not unfair, even though landlord acquiesced in breach of covenant for over five years, where tenant failed to show that landlord was not induced by tenant's promise to comply with covenant when lease was made and breach of tenant's promise to limit occupancy is proper basis for eviction. D.C. Code 1981, §§ 17-305(a), 45-2551(b). *Grubb v. WM. Calomiris Invest Corp.*, 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Refusal to grant equitable relief to tenant after tenant cured breach of covenant restricting occupants of apartment subject to landlord's written consent by having unauthorized resident move out shortly before trial was not abuse of discretion where tenant was in clear violation of lease and had never attempted to cure breach during statutory notice and cure period. D.C. Code 1981, §§ 17-305(a), 45-2551(b). *Grubb v. WM. Calomiris Invest Corp.*, 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Public housing authority was not required to provide tenant an opportunity to cure lease violation arising from past criminal acts, under statute governing regaining possession of a public housing unit for a lease violation; tenant could not "cure" her "ongoing" lease violations, as the criminal acts had been committed. *D.C. Housing Authority v. Whitfield*, 132 WLR 2445 (Super. Ct. 2004).

Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the land-

lord wishes to retake possession for one of the reasons specified in this section. In all cases save (1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (this chapter). Thus, in effect, the Act creates residential tenancies of indefinite duration. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

Although tenant's prior convictions for misdemeanor offenses that did not occur on public housing premises could constitute basis for a lease violation under certain circumstances, housing authority failed to establish nexus between tenant's past criminal acts and any threat to health, safety and right to peaceful enjoyment of other tenants at time notice to vacate was served, as was required under statute governing regaining possession of a public housing unit for a lease violation. *D.C. Housing Authority v. Whitfield*, 132 WLR 2445 (Super. Ct. 2004).

Habitual late payment of rent.

Late payments of rent, at least when continuous and willful, are violations of an obligation of tenancy which may be the subject of eviction upon the giving of the required 30-day statutory notice, pursuant to rent control law, just as much as violations based upon occupancy limits, banned use of the premises, or other non-rent-related violations. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

An action may be brought against a tenant of rent-controlled premises for habitual late payments of rent, even though the tenant is at the time current on rent payments and hence cannot be evicted for nonpayment of rent. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

In general.

Under District of Columbia law, Veterans Administration, as owner of apartment building by foreclosure, had duty to heat tenant's apartment after it failed in its attempt to evict tenant. D.C. Code 1981, § 45-1561 (repealed). *Valentine v. United States*, 706 F. Supp. 77, 1989 U.S. Dist. LEXIS 1999 (1989).

A residential tenant in an apartment subject to the rent control law may not be evicted from the apartment, notwithstanding the expiration of the tenant's lease, except for nonpayment of rent or for violation of another obligation of tenancy. *Suggs v. Lakritz Adler Mgmt., LLC*, 933 A.2d 795, 2007 D.C. App. LEXIS 489 (2007).

Tenant has a right not to have his or her possession interfered with except by lawful process, and violation of that right gives rise to a cause of action in tort. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District*

of Columbia, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Assuming that apartment occupant was tenant's subtenant, tenant could not evict him except through court process. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

If tenant fails to pay rent or violates other conditions of tenancy and refuses to vacate voluntarily, housing provider may recover possession only through court process. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Landlord should not have to comply with terms of eviction control statute if tenant makes promise to vacate in exchange for valuable consideration, in arm's length transaction separate from lease. D.C. Code 1981, § 45-2551. *Moore v. Jones*, 542 A.2d 1253, 1988 D.C. App. LEXIS 131 (1988).

In possessory action, tenant's defense that lease was void as matter of law such that claim for rent arrearage would fail and recoupment defense lapsed with landlord's voluntary dismissal of claim for nonpayment of rent. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Jury trials.

Trial court's error was not harmless, as to denial of residential tenants' Seventh Amendment right to jury trial, in landlords' action seeking possession of apartment for personal use and occupancy by one of the landlords, where trial court was not obliged to take the case away from jury; the defenses asserted by tenants, such as retaliation for tenants' complaints about the condition of the premises, required assessment of credibility of witnesses. *King v. Berindoague*, 928 A.2d 693, 2007 D.C. App. LEXIS 467 (2007).

Residential tenants were deemed to have filed a written demand for jury trial on day of hearing in landlords' action seeking possession of apartment for personal use and occupancy by one of the landlords, and tenants therefore did not waive their Seventh Amendment right to jury trial by failing to timely assert such right, though court clerk would not allow tenants to file their answer, which included jury trial demand, because computers were down in clerk's office; everyone was aware that tenants were demanding trial by jury, tenants asserted at hearing that they had put their jury demand in writing, landlords' counsel acknowledged at hearing that he had a copy of that document, and landlords' counsel did not object at that time that the document was defective in any way. *King v. Berindoague*, 928 A.2d 693, 2007 D.C. App. LEXIS 467 (2007).

Lease agreements.

Residential landlord was not precluded from

conditioning rent discount on month-to-month tenant's execution of new 12-month lease agreement, absent finding of large disparity between discounted rent and rent charged as month-to-month so that tenant was effectively coerced into abandoning month-to-month tenancy that he was otherwise entitled to maintain. *Double H Hous. Corp. v. David*, 947 A.2d 38, 2008 D.C. App. LEXIS 96 (2008).

If a landlord wishes to make certain payments part of a tenant's rental obligation, the lease must unequivocally so provide. *Ruppert Real Estate, Inc. v. McCarter*, 111 WLR 1953 (Super. Ct. 1983).

Notice to correct or vacate.

Landlord's notice to vacate provided to tenants was invalid under the Rental Housing Act of 1985, when landlord intended to hold the rental units vacant for 12 months following the evictions and then sell the rental units to owner-occupiers; the Act prohibited landlord from resuming any housing use of the units other than for rental housing, landlord could not avoid the Act by using a third party to do what it was not allowed to do itself, and landlord's intention was contrary to the purpose of the Act, which was to protect the existing supply of rental housing. *BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 2009 D.C. App. LEXIS 597 (2009).

Landlord's failure to serve statutory notice to cure unpaid rent upon tenant required dismissal of landlord's action for nonredeemable possession of the property, even though tenant's alleged continuous and willful failure to pay rent seemed incurable. *Bonner v. Peterson*, 966 A.2d 851, 2009 D.C. App. LEXIS 33 (2009).

Once residential landlord conceded that tenant cured the noise violation within the thirty-day period, it was required to issue a new notice to cure or quit for any subsequent violation and provide tenant with thirty days to cure before it could seek possession. *Borger Mgmt. v. Nelson-Lee*, 959 A.2d 694, 2008 D.C. App. LEXIS 430 (2008).

Rental Housing Act effectively merges the notice to cure and the notice to quit into one required notice before landlord may file suit for possession based on tenant's failure to cure violation of tenancy. *Borger Mgmt. v. Nelson-Lee*, 959 A.2d 694, 2008 D.C. App. LEXIS 430 (2008).

Under Rental Housing Act, landlords are required to provide a single notice to cure or vacate, and a notice to quit is insufficient if it does not permit the tenant to cure the violation. *Borger Mgmt. v. Nelson-Lee*, 959 A.2d 694, 2008 D.C. App. LEXIS 430 (2008).

Once prior violations have been sufficiently cured, landlords are required under the Rental Housing Act to give tenants thirty days to cure any subsequent violations, but when there is a

similar repeat violation after the initial thirty-day period, the Act allows for a fact-sensitive inquiry into whether a tenant has effectively cured; such an interpretation allows landlords to issue only a notice to quit, even after the cure period has elapsed, when a tenant temporarily stops the violation in the thirty-day period but repeats the same violation soon afterwards. *Borger Mgmt. v. Nelson-Lee*, 959 A.2d 694, 2008 D.C. App. LEXIS 430 (2008).

Clause in residential lease stating that the lease itself "shall serve as a notice to quit" in the event of failure to pay timely rent did not comply with statutory requirement of detailed written, thirty-day notice to vacate. *Luskey v. Borger Mgmt.*, 917 A.2d 631, 2007 D.C. App. LEXIS 75 (2007).

Judgment entered on residential landlord's complaint for nonpayment of March rent based on trial court's finding that pattern of late rent payments amounted to breach of covenant in lease to pay rent in advance and when due violated tenant's right to due process and statutory 30-day notice requirements for eviction, where complaint did not allege such breach. *Luskey v. Borger Mgmt.*, 917 A.2d 631, 2007 D.C. App. LEXIS 75 (2007).

When applicable, compliance with provision in District of Columbia's Rental Housing Act requiring a notice to correct a violation is necessary before a landlord may institute eviction proceedings. *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apts.*, 890 A.2d 249, 2006 D.C. App. LEXIS 9 (2006).

Landlord's written notice to quit federally subsidized housing, prepared after fatal shooting occurred and loaded shotgun was found in tenant's unit, met both District of Columbia and federal requirements for notice, though it did not expressly reference paragraph of lease agreement that tenant had violated, where notice contained a statement detailing the reasons for the eviction, informed tenant that the termination was for lease violations, a cursory review of the lease would have led tenant to relevant paragraph of lease, which was the only one dealing with termination of the tenancy, and notice's reference to "maintaining a gun on the property" was sufficient to direct tenant to the District's laws prohibiting possession of unregistered firearms and ammunition. *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apts.*, 890 A.2d 249, 2006 D.C. App. LEXIS 9 (2006).

Notice to quit, which inaccurately stated that month-to-month rental housing tenants were required to cure their lease violations by August 26, which was 30 days after the notice to quit was received, when in fact the period within which to cure or vacate expired on September 1, which was the first day of the rental period immediately following the lapse of the 30-day notice period, was valid, where

landlord did not commence an action for possession before September 1, and tenants did not pay their back rent until September 20; even if the notice had been accurate, tenants would not have corrected the lease violation in time. *Grimes v. Newsome*, 780 A.2d 1119, 2001 D.C. App. LEXIS 198 (2001).

Service of a notice to quit is, unless waived, a condition precedent to a landlord's suit for possession of rental housing. *Grimes v. Newsome*, 780 A.2d 1119, 2001 D.C. App. LEXIS 198 (2001).

The cure period for a failure to pay rent for rental housing on time will expire, not 30 days after the notice to quit is received, but rather on the first day of the rental period immediately following the lapse of the 30-day notice period which commences on receipt of the notice. *Grimes v. Newsome*, 780 A.2d 1119, 2001 D.C. App. LEXIS 198 (2001).

The allegedly inaccurate Spanish translation of the notice to quit did not render the notice to quit invalid, where the rental housing tenants did not speak Spanish and therefore did not rely on the Spanish translation. *Grimes v. Newsome*, 780 A.2d 1119, 2001 D.C. App. LEXIS 198 (2001).

Notice to quit rental housing, which stated that tenants had violated their obligations under the lease by their "[n]onpayment of rent \$2,400.00 [and] consistent late payments of rent," satisfied the requirement of specifying what actions needed to be taken by tenants to avoid an eviction. *Grimes v. Newsome*, 780 A.2d 1119, 2001 D.C. App. LEXIS 198 (2001).

Tenant charged with nonpayment of rent was not entitled to 30-day notice to cure or vacate that could not expire any sooner than on the day of the month upon which his tenancy commenced. D.C. Code 1981, §§ 45-1404, 45-2551(a). *Mullin v. N. St. Follies Ltd. P'ship.*, 712 A.2d 487, 1998 D.C. App. LEXIS 105 (1998).

Single notice to public housing tenant which combined notice of tenant's right to administrative review, required under federal law, and notice to cure or quit because of failure to pay rent, required under state law, was sufficient where tenant had not asserted right to administrative review and notice clearly informed tenant of reasons for termination of her tenancy, her right to remain in possession of premises if she took prescribed actions by a certain date, and appropriate steps she could take to challenge termination; Department of Housing and Urban Development (HUD) regulations stated that state and federal notice periods may run concurrently. D.C. Code 1981, § 45-2551. *District of Columbia v. Willis*, 612 A.2d 1275, 1992 D.C. App. LEXIS 204 (1992).

Thirty-day notice to correct or vacate period begins to run on day tenant receives notice. D.C. Code 1981, § 45-2551(b). *Cormier v.*

McRae, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

The 1980 Renting Housing Act merged into one required notice to cure and the notice to quit which landlord was required to give tenant before filing suit for possession based on tenant's failure to correct violation of tenancy. D.C. Code 1981, § 45-2551(b); § 45-1561(b) (repealed). *Cormier v. McRae*, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

Landlord's notice to month-to-month tenant to cure or vacate was sufficient under statute providing that housing provider may recover possession of rental unit where tenant is violating obligation of tenancy and fails to correct violation within 30 days after receiving notice to correct violation or vacate; tenant received notice to cure or vacate of more than 30 days during which time he could have cured alleged violations and avoided landlord's suit for possession. D.C. Code 1981, § 45-2551(b). *Cormier v. McRae*, 609 A.2d 676, 1992 D.C. App. LEXIS 125 (1992).

Landlord could enforce covenant in lease of residential property which restricted occupancy of apartment subject to landlord's written consent, even though landlord acquiesced in occupancy of apartment by third party for more than five years, since landlord gave tenant statutory notice and opportunity to cure default and tenant failed to cause third party to vacate apartment or obtain landlord's written consent to third party's continued occupancy. D.C. Code 1981, §§ 17-305(a), 45-2551(b). *Grubb v. WM. Calomiris Invest Corp.*, 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Housing provider must challenge notice of noncompliance before Rental Accommodations and Conversion Division and obtain final agency decision as to validity of notice to vacate before using notice to vacate as basis for action for possession and asking court to rule that notice is valid. D.C. Code 1981, §§ 45-1631, 45-2551(i). *Stroud v. Steininger*, 563 A.2d 1091, 1989 D.C. App. LEXIS 176 (1989).

It was reasonable to interpret landlord's letter to Rental Accommodations and Conversion Division as written argument challenging Division's notice of noncompliance and, thus, landlord did not waive his right to object to determination that notice to vacate was invalid. D.C. Code 1981, §§ 45-1631, 45-2551(i). *Stroud v. Steininger*, 563 A.2d 1091, 1989 D.C. App. LEXIS 176 (1989).

Landlord could not bring action for possession of premises based upon notice to vacate with respect to which Rental Accommodations and Conversion Division issued notice of noncompliance, though landlord sent letter to Division challenging notice of noncompliance to which Division did not respond; no final decision was ever issued by Division and administrative process before it had not been com-

pleted. D.C. Code 1981, §§ 45-1631, 45-2551(i). *Stroud v. Steininger*, 563 A.2d 1091, 1989 D.C. App. LEXIS 176 (1989).

Cure period for an obligation to pay rent on time will expire, not 30 days after notice to correct or vacate is received, but rather on the first day of the rental period immediately following lapse of the 30-day notice period which commences on receipt of the notice; consequently, if notice to correct or vacate is not received by tenant exactly 30 days before first day of next rental period, cure period will be longer than 30 days. D.C. Code 1981, § 45-2551(b). *Pritch v. Henry*, 543 A.2d 808, 1988 D.C. App. LEXIS 107 (1988).

Tenant who initially orally told landlord she intended to quit premises did not waive her right to written notice to vacate before landlord could seek possession; even if tenant can waive right to written notice, such waiver must be in writing, and tenant did not relinquish possession of premises when her plans to quit premises fell through. D.C. Code 1981, § 45-1408. *Burns v. Harvey*, 524 A.2d 35, 1987 D.C. App. LEXIS 329 (1987).

Landlord who seeks to evict a tenant for violation of an obligation under the tenancy is not required to give the tenant a notice to quit in addition to a notice to cure or vacate. D.C. Code 1981, §§ 45-1406, 45-1561(b). *Cooley v. Suitland Parkway Overlook Tenants' Assn.*, 460 A.2d 574, 1983 D.C. App. LEXIS 376 (1983).

Landlord's informing tenants, in notice to quit, that, once renovations were completed, they were entitled to re-rent apartment at the same "rent ceiling" rather than at the same "rent" was insufficient to inform tenants of their rights, where difference between rent tenants were paying for apartment and rent ceiling was \$160 per month. *Independence Management of Delaware, Inc. v. Ortiz*, 132 WLR 1969 (Super. Ct. 2004).

Notice provisions in § 45-1401 are superseded by notice provisions in this section in requiring written notice to quit in cases where a lease for a definite term has come to an end. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

Failure of tenant to abide by his or her written notice of intention to vacate is not specifically enumerated in this section as one of the permissible reasons for which a landlord may give that tenant a notice to vacate; however, a written notice by a tenant that he or she will vacate by a date certain becomes, in effect, a condition or obligation of the lease. Failure of the tenant to vacate as promised in the notice

constitutes a violation of an obligation of the tenancy, for which a landlord may give a 30-day notice pursuant to this section. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

Where landlord seeks to recover possession of apartment for his own occupancy as a dwelling, he must give tenant a 90-day notice to vacate under subsection (d), not a 30-day notice under subsection (b). *Ryles v. Renfrow*, 113 WLR 629 (Super. Ct. 1985).

Payment of rent arrearages.

Trans-Lux equitable relief was available to tenant, who had concededly tendered whole amount owing to landlord; violation of terms of lease by failure to pay rent on first of each month was not willful under circumstances which included tenant's work-related injuries and landlord's practice of accepting rent through the tenth of the month without penalty. D.C. Code 1981, §§ 17-305(a), 45-2551(b). *Pritch v. Henry*, 543 A.2d 808, 1988 D.C. App. LEXIS 107 (1988).

Trial court's decision to give tenant right to redeem her tenancy by paying rent that had become overdue effectively modified terms of consent judgment requiring tenant to relinquish possession if she did not purchase property, and was beyond court's authority. D.C. Code 1981, § 45-2551. *Moore v. Jones*, 542 A.2d 1253, 1988 D.C. App. LEXIS 131 (1988).

Persons protected by statute.

Tenants who entered into agreement with their landlord for fixed rental charge and who, under District of Columbia law [D.C. Code 1981, § 45-1561(a)] could not be evicted for refusing to sign written lease, did not lose those rights once landlord's property was transferred to Secretary of Housing and Urban Development upon foreclosure. *Rowe v. Pierce*, 622 F. Supp. 1030, 1985 U.S. Dist. LEXIS 13167 (1985).

Provision in public housing tenant's lease under which housing authority sought eviction, which required tenant and other persons on premises to conduct themselves in manner that would not disturb neighbors' peaceful enjoyment of their accommodations and would be conducive to maintaining project in decent, safe and sanitary condition, did not incorporate federal one-strike policy allowing for termination of lease for criminal activity, and thus, tenant was entitled to statutory opportunity to cure lease violation arising from criminal activity by tenant's son. *Pratt v. D.C. Hous. Auth.*, 942 A.2d 656, 2008 D.C. App. LEXIS 80 (2008).

Daughter of deceased tenant would be granted intervention as a matter of right in Housing Authority's in rem action to recover possession of housing unit, as daughter had continued to live in unit since tenant's death and had paid rent and thus had an interest in

the transaction which was the subject matter of the suit, eviction of daughter would impede her ability to protect that interest, and there were no other parties to the action which could protect daughter's interest. *McPherson v. D.C. Hous. Auth.*, 833 A.2d 991, 2003 D.C. App. LEXIS 619 (2003).

Occupant timely filed a motion to intervene as of right in bank's action for possession of a foreclosed house, where occupant filed motion three months after the complaint for possession was brought, occupant twice visited the court and spoke with the bank's attorney after learning of the suit, and occupant would have a defense to the action if she was a "tenant" occupying a "rental unit" within the meaning of the Rental Housing Act (RHA). *Robinson v. First Nat'l Bank of Chicago*, 765 A.2d 543, 2001 D.C. App. LEXIS 10 (2001).

Rental Housing Act of 1985, which enlarged protections afforded tenants without leases from sudden evictions, extends to subtenants. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Apartment building maintenance men who occupied apartment rent-free as partial compensation for their services did not occupy "rental unit" within meaning of Rental Housing Act of 1985, and thus were not "tenants" within meaning of Act; therefore, employer was not obligated to give them 30 days' notice to quit. D.C. Code 1981, §§ 45-2503(33, 36), 45-2551. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 1989 D.C. App. LEXIS 18 (1989).

Tenants holding over after foreclosure of property which was treated before and subsequent to foreclosure as rental property were entitled to eviction protections of Rental Housing Act of 1980 [D.C. Code 1981, § 45-1561 et seq.]. *Merriweather v. D.C. Bldg. Corp.*, 494 A.2d 1276, 1985 D.C. App. LEXIS 411 (1985).

Tenant of defaulting deed of trust debtor becomes tenant of purchaser at trustee's sale within meaning of Rental Housing Act of 1980. D.C. Code 1981, § 45-1561. *Washington Federal Sav. & Loan Assn. v. District of Columbia Rental Housing Com.*, 492 A.2d 279, 1985 D.C. App. LEXIS 381 (1985).

Statutory eviction restrictions applied to mortgagee's attempt to evict tenant who continued to live in her home after landlord defaulted on mortgage and mortgagee repurchased home at foreclosure sale, and restrictions superseded earlier enacted statutes which provided that tenant continuing in possession following foreclosure sale was tenant at will whose tenancy could be terminated by giving 30 days' of written notice. D.C. Code 1981, §§ 45-222, 45-1403, 45-1561, 45-1561(a). *Administrator of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1985 D.C. App. LEXIS 353 (1985).

Protective orders.

In context of protective order issued in land-

lord and tenant proceedings, trial court was not required to resolve factual controversy engendered by tenant's assertion that, despite facial character of lease and tenancy, landlord had permitted him to use premises partially for residential purposes. D.C. Code 1981, §§ 45-2503(33), 45-2551(a, b). *King v. Jones*, 647 A.2d 64, 1994 D.C. App. LEXIS 146 (1994).

Landlord made prima facie showing that he was exempt from rent control statutes by tendering lease demonstrating commercial nature of tenancy, permitting imposition of sanctions for tenant's failure to make protective order payments. D.C. Code 1981, § 45-2551(a, b); D.C. Mun. Regs. tit. 14, 4302.1. *King v. Jones*, 647 A.2d 64, 1994 D.C. App. LEXIS 146 (1994).

Tenant or landlord is entitled to jury trial, upon timely request, to determine parties' respective rights in funds deposited by tenant in court registry pursuant to protective order covering period while landlord's possession action is pending. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

After resolution of possession action, trial court may not make discretionary release to tenant of funds paid into registry in lieu of rent without McNeal evidentiary hearing so as to obviate need for jury trial on disbursement of such funds. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

If tenant or landlord makes timely demand for jury at McNeal evidentiary hearing on disbursement of registry funds after resolution of possession action, Constitution requires that disbursement proceeding must be certified to Civil Assignment Office for expedited jury trial; or be tried initially in Landlord and Tenant Branch, while preserving tenant's or landlord's right to appeal court's ruling to Civil Division for jury trial de novo, with protective order still in effect pending Civil Division resolution. *Landlord and Tenant Rules* 1, 6. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Partial release to landlord of funds deposited by tenant in court registry pursuant to protective order covering period while landlord's possession action is pending is subject to review at McNeal evidentiary hearing following resolution of possession action. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

There is special responsibility at McNeal evidentiary hearing on disbursement of registry funds following resolution of possession action to be sure that final distribution of funds is precisely in accord with parties' respective rights and obligations for rent/damages over entire litigation period, including any necessary judgment for deficiency awardable to either party. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Defenses directed only at period ending with return date in possessory action were not le-

gally relevant to tenant's payment of funds into registry in lieu of rent for months thereafter or to eventual disbursement of such funds. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Tenant in notice case may treat possessory action and anticipated McNeal evidentiary hearing on disbursement of registry funds separately and file jury demand for McNeal hearing alone, although tenant may, in anticipation of protective order, file jury demand for both possessory action and anticipated McNeal hearing when tenant files answer to complaint for possession. Landlord and Tenant Rule 6. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

For good cause shown, trial court may extend time for filing demand for jury at McNeal evidentiary hearing on disbursement of registry funds following resolution of possessory action, beyond day of trial of possessory action or date party demanding jury files motion or opposition to motion to dismiss, for summary judgment or to strike pleadings for failure to comply with protective order. Landlord and Tenant Rule 6. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Tenant who had filed jury demand in possessory action which was resolved before ruling in unrelated case that issuance of protective order reflects "separate and distinct equitable proceeding, not part of the underlying possessory action," would be allowed to assert right to jury on remand for McNeal evidentiary hearing on disbursement of registry funds deposited by tenant in lieu of rent. U.S.C. Const.Amend. 7. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Protective order in context of landlord-tenant cases assures landlord that any rent due under lease will in fact be paid albeit into court registry for the time being and assures tenant who successfully defends suit that he will not have to forfeit his lease because he cannot make up unpaid deficiency and provides fund from which tenant may receive abatement if housing code violations warranting abatement are found. *Temple v. Thomas D. Walsh, Inc.*, 485 A.2d 192, 1984 D.C. App. LEXIS 561 (1984).

After underlying landlord-tenant action is disposed of, trial court has obligation, irrespective of outcome of action, to distribute in an equitable fashion any funds deposited in the court registry pursuant to a protective order. *Temple v. Thomas D. Walsh, Inc.*, 485 A.2d 192, 1984 D.C. App. LEXIS 561 (1984).

Given trial court's uncontested finding that, while possessory action was pending, tenant had received benefit of housing on very premises that were subject of litigation, and given tenant's failure to offer any evidence which would have warranted reduction in amount of

rent due under lease, trial court acted well within its discretion as a court of equity in releasing to the landlord funds deposited by tenant in the court registry pursuant to a protective order. *Temple v. Thomas D. Walsh, Inc.*, 485 A.2d 192, 1984 D.C. App. LEXIS 561 (1984).

A disposition favorable to tenant in underlying landlord-tenant action did not preclude trial court from releasing to landlord any funds which tenant deposited into registry of the court pursuant to a protective order. *Temple v. Thomas D. Walsh, Inc.*, 485 A.2d 192, 1984 D.C. App. LEXIS 561 (1984).

Retaliatory eviction.

Tenant's breach of lease agreement in failing to provide landlord with duplicate keys to replacement locks on her door did not necessarily defeat her retaliatory eviction defense, if tenant could establish that she had provided landlord with access to apartment to make repairs. D.C. Code 1981, § 45-2552. *De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

Evidence created jury question as to whether tenant's letters to landlord regarding need for repairs to her apartment were the basis for landlord's eviction action, thus tenant was entitled to have jury consider retaliatory eviction defense to her admitted breach of her lease provision prohibiting tenant from changing locks. D.C. Code 1981, §§ 45-2552, 45-2552(b)(1). *De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

If a tenant alleges acts which fall under the retaliatory eviction statute, the statute by definition applies, and landlord is presumed to have taken an "action not otherwise permitted by law" unless it can meet its burden under the statute. D.C. Code 1981, §§ 45-2552, 45-2552(b)(1). *De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

Defense of housing code violations is irrelevant to possessory action based upon valid 30-day notice to quit, unless raised in context of claim of retaliatory eviction. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Retaliatory eviction defense to possessory action, while applicable to notice to quit, provides no basis for rent abatement. *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Under Rental Housing Act of 1980 and Rental Housing Act of 1985, tenant may introduce evidence of code violation complaints more than six months before landlord's allegedly retaliatory action where tenant has complained within six months and seeks to buttress retaliatory motive argument against landlord by showing earlier complaints as well. D.C. Code

1981, § 45-2552(b); § 45-1562(b) (repealed), *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Presumption of retaliatory action by landlord in seeking possession of tenant's unit based on 90-day notice to vacate did not arise, even if tenant's remarks about her actions to force former owner to comply with law before selling to landlord could reasonably be interpreted as defense to eviction by new owner, where new owner took action authorized by law. D.C. Code 1981, §§ 45-1561(d), 45-1562. *Wahl v. Watkins*, 491 A.2d 477, 1985 D.C. App. LEXIS 378 (1985).

Review.

Remand was required for trial court to determine what amounts month-to-month tenant was required to pay for rent after tenant received notice of second rent increase and landlord began refusing to accept checks written for original amount after second rent increase went into effect, in landlord's action for possession, in view of landlord's delay in filing complaint and cashing of one check for original rent amount during relevant period. *Double H Hous. Corp. v. David*, 947 A.2d 38, 2008 D.C. App. LEXIS 96 (2008).

Exercise by landlord of its discretion to evict tenant from unit rented under federal rent-assistance program was not subject to a review for abuse of discretion, in suit for possession action that landlord commenced after fatal shooting occurred and loaded shotgun was found in tenant's unit, once trial court found that tenant permitted criminal activity in her unit that threatened the safety of other tenants; federal statute and regulations implementing statute's policy authorized evictions based on criminal activity that threatened the safety of other without limitation by, or balancing or consideration of, any other factors, and under the regulations a reviewing court's sole role was to determine whether the ground relied upon for eviction existed. *Scarborough v. Winn Residential L.L.P./Atlantic Terrace Apts.*, 890 A.2d 249, 2006 D.C. App. LEXIS 9 (2006).

Remand was required in rent abatement proceeding involving tenant's withholding of rent in subsidized housing because of housing code violations to determine whether Department of Housing and Urban Development (HUD) or District of Columbia Housing Authority (DCHA) sought repayment of rent; if neither HUD or DCHA sought repayment, tenant should recover funds, as landlord should not profit from his breach of duty to maintain leased premises. *Anderson v. Abidoye*, 824 A.2d 42, 2003 D.C. App. LEXIS 286 (2003).

In bank's action for possession of foreclosed house, remand was required for a determination of whether house's occupant was a "tenant" occupying a "rental unit" within the meaning of

the Rental Housing Act (RHA), for purposes of determining whether she should be allowed to intervene as of right. *Robinson v. First Nat'l Bank of Chicago*, 765 A.2d 543, 2001 D.C. App. LEXIS 10 (2001).

Waiver.

Neither the Rental Housing Act nor accompanying regulations provide for a waiver of the tenant's opportunity to correct a new violation once the tenant has sufficiently cured a previous violation. *Borger Mgmt. v. Nelson-Lee*, 959 A.2d 694, 2008 D.C. App. LEXIS 430 (2008).

Wrongful eviction.

Fact question existed as to whether there was a subtenancy relationship between occupants and tenant, thus precluding summary judgment in occupants' wrongful eviction action against property owner and District. *Wilson v. Hart*, 829 A.2d 511, 2003 D.C. App. LEXIS 485 (2003).

Level of training to which District of Columbia should be held in training police officers for handling landlord-tenant disputes concerning possession was not within common knowledge of lay persons, and thus, expert testimony was required to establish standard of care, in ousted apartment occupant's action against District for negligent training and supervision arising from incident in which police officer allegedly assisted tenant in wrongfully evicting occupant, who claimed to be a subtenant. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Assuming that police assisted tenant in wrongfully evicting apartment occupant, who claimed to be a subtenant, evidence of three reported cases and calls from several unspecified people allegedly complaining about wrongful evictions involving the police was insufficient to support inference of a de facto policy which would support § 1983 liability on occupant's constitutional claim against District of Columbia. 42 U.S.C. § 1983; D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

Genuine issue of material fact existed as to whether ousted apartment occupant was tenant's subtenant, precluding summary judgment on occupant's claim against District of Columbia based on police officer's alleged act of assisting tenant in a wrongful eviction. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

If housing provider evicts tenant without process, provider can be liable in tort for wrongful eviction. D.C. Code 1981, §§ 45-2503(15, 36), 45-2551. *Young v. District of Columbia*, 752 A.2d 138, 2000 D.C. App. LEXIS 123 (2000).

§ 42-3505.02. Retaliatory action.

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider.

(July 17, 1985, D.C. Law 6-10, § 502, 32 DCR 3089.)

Section references. — This section is referred to in §§ 42-3402.10 and 42-3502.05.

Prior Codifications. — 1981 Ed., § 45-2552.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

CASE NOTES

ANALYSIS

Breach of lease by tenant.

Collateral estoppel.
Federal Preemption.
In general.

Jurisdiction.
Presumptions and burden of proof.
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Breach of lease by tenant.

Termination of residential apartment lease by landlord was not demonstrated to be pretextual since breach of lease was declared for tenant's failure to comply with covenant restricting occupants subject to landlord approval and, thus, forfeiture was properly ordered when tenant failed to cure after statutory notice. D.C. Code 1981, § 45-2552. Grubb v. WM. Calomiris Invest Corp., 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Collateral estoppel.

Issue of landlord's alleged source-of-income discrimination, which was raised by tenant as defense to landlord's action for possession on ground of nonpayment of rent, was not procedurally precluded, under collateral estoppel principles, by judgment of the Department of Consumer and Regulatory Affairs (DCRA) on tenant's petition asserting that landlord's termination of its Section 8 participation was unlawful retaliation for tenant's complaint alleging housing code violations; issue was not actually litigated or essential to DCRA's ruling. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Issue of legality of landlord's unilateral termination of tenant's Section 8 contract, which was raised by tenant as defense to landlord's action for possession on ground of nonpayment of rent, was procedurally precluded, under collateral estoppel principles, by judgment of the Department of Consumer and Regulatory Affairs (DCRA) on tenant's petition asserting that landlord's termination of its Section 8 participation was unlawful retaliation for tenant's complaint alleging housing code violations; DCRA was acting in a judicial capacity, and issue was both "actually litigated," and "essential" to the judgment of the DCRA. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Federal Preemption.

Decision by ALJ of the Department of Consumer and Regulatory Affairs (DCRA), which dismissed tenant's claim of retaliation because the alleged retaliatory action by landlord was permitted by law, constituted a ruling that landlord's right to decline to renew Section 8 contract prevailed over inconsistent local statutes, which were effectively preempted by federal law creating the Section 8 program, even though ALJ did not discuss the underlying legal principles governing termination, the specific language of the Section 8 contract, or

federal Section 8 law. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

In general.

If a tenant alleges acts which fall under the retaliatory eviction statute, the statute by definition applies, and the landlord is presumed to have taken an action not otherwise permitted by law unless it can meet its burden under the statute. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

The fact that landlord's motivation for increasing tenant's rent was to recoup the costs incurred in collecting delinquent rent was not impermissible under the Rent Stabilization Act, provided that landlord did not increase rent beyond authorized rent ceiling and did not increase rent as retaliation or based on discrimination. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

Antiretaliation statute provided tenant with no independent cause of action for damages from landlord. D.C. Code 1981, § 45-2552(a). *Twyman v. Johnson*, 655 A.2d 850, 1995 D.C. App. LEXIS 47 (1995).

Relevant factor in determining whether forfeiture of residential lease should be ordered is presence or absence of "fair dealing" by landlord. D.C. Code 1981, § 45-2552. *Grubb v. WM. Calomiris Invest Corp.*, 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Under Rental Housing Act of 1980 and Rental Housing Act of 1985, tenant may introduce evidence of code violation complaints more than six months before landlord's allegedly retaliatory action where tenant has complained within six months and seeks to buttress retaliatory motive argument against landlord by showing earlier complaints as well. D.C. Code 1981, § 45-2552(b); § 45-1562(b) (repealed). *Habib v. Thurston*, 517 A.2d 1, 1985 D.C. App. LEXIS 578 (1985).

Jurisdiction.

A commercial tenant may not raise the defense of retaliatory eviction to a landlord's action for possession of the premises. D.C. Code 1981, §§ 45-2503(15, 33, 36), 45-2552. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, 527 A.2d 1292, 1987 D.C. App. LEXIS 386 (1987).

The Superior Court has jurisdiction along with the Rental Housing Commission and Rent Administrator to decide retaliation issues. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

Presumptions and burden of proof.

Presumption of retaliatory action was triggered under the Rental Housing Act, in possession action brought by new owner of apartment building against holdover tenants, such that new owner was required to rebut presumption by clear and convincing evidence; though rent

administrator had determined that new owner's intended improvements could not be safely or reasonably accomplished while the rental units were occupied, possession action was brought after tenants' association had sued former owner and new owner alleging that a sale had occurred that triggered tenants' right to purchase under the Rental Housing Conversion and Sale Act, holdover tenants were members of tenants' association, holdover tenants had been paying rent into the court registry rather than to the new owner, and the withholding of rent had continued during six-month period preceding new owner's service of 120-day notices to vacate the building. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Where a tenant makes the required threshold showing under the retaliatory eviction statute, the trier of fact shall presume that retaliatory action was taken unless the housing provider proves otherwise by clear and convincing evidence. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Mere failure of housing provider to rebut Rental Housing Act's presumption of retaliation, which presumption is based on conduct by a housing provider that takes place within six months after a tenant has done certain acts, does not establish that housing provider acted willfully, as is required under Act for imposition of civil fine of up to \$5,000. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

Rental Housing Act's presumption of retaliation, based on conduct by a housing provider that takes place within six months after a tenant has done certain acts to exercise or enforce the tenant's rights under the Act, ripens automatically into a conclusion of retaliation unless the housing provider rebuts the presumption by clear and convincing evidence. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

Attorney examiner's misallocation of burden of proof to tenant in rejecting retaliation claim, in which examiner stated "the evidence, when viewed in its totality, does not support by the weight of clear and convincing evidence, the [tenant]'s allegations of retaliatory actions," did not require remand for new findings, where housing provider had contested every aspect of petitioner's allegations of retaliation with specificity, housing provider provided extensive evidence in support of its position, and examiner made de termination after initially phrasing statutory question such that housing provider had burden of proof. *Killingham v. D.C. Rental Hous. Comm'n*, 810 A.2d 925, 2002 D.C. App. LEXIS 668 (2002).

Landlord had burden of proving nonretaliatory purpose behind tenants' eviction by clear and convincing evidence, where ten-

ants were eligible for benefit of statutory presumption that eviction was retaliatory. *D.C. Code 1981, § 45-2552. Youssef v. United Mgmt. Co.*, 683 A.2d 152, 1996 D.C. App. LEXIS 206 (1996).

If a tenant alleges acts which fall under the retaliatory eviction statute, the statute by definition applies, and landlord is presumed to have taken an "action not otherwise permitted by law" unless it can meet its burden under the statute. *D.C. Code 1981, §§ 45-2552, 45-2552(b)(1). De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

Presumption of retaliatory action by landlord in seeking possession of tenant's unit based on 90-day notice to vacate did not arise, even if tenant's remarks about her actions to force former owner to comply with law before selling to landlord could reasonably be interpreted as defense to eviction by new owner, where new owner took action authorized by law. *D.C. Code 1981, §§ 45-1561(d), 45-1562. Wahl v. Watkis*, 491 A.2d 477, 1985 D.C. App. LEXIS 378 (1985).

Remand.

Proper remedy, upon determination by Rental Housing Commission (RHC) that administrative law judge (ALJ) had not made necessary finding, for imposition of civil fine under Rental Housing Act for housing provider's retaliation against tenant for joining tenant organization, that housing provider had acted willfully was for RHC to remand to ALJ for necessary findings of fact, rather than to vacate the civil fine imposed by ALJ, where RHC had not found the record would not support a finding of willfulness. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

Retaliatory eviction.

When the statutory presumption of retaliatory eviction comes into play in a possession action, it will not suffice for a landlord to merely to articulate a legitimate, non-retaliatory reason, because the legislature has assigned a substantial burden of proof, clear and convincing evidence, to the landlord. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

The statutory presumption of retaliatory eviction in a possession action relieves the tenants of the burden of establishing a prima facie case of retaliatory action, and, in order to rebut the presumption, a landlord must, at a minimum, come forward with a legitimate, non-retaliatory reason for the challenged action. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

The retaliation defense to eviction is not limited to situations where the landlord acts illegally; a retaliatory motive may taint an action to evict tenants that would otherwise be lawful, and constitute a retaliatory eviction in violation of the Rental Housing Act. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Genuine issue of material fact as to whether action of possession against holdover tenants, brought by new corporate owner of apartment building which was formerly a subsidiary of prior owner of apartment building before 99% of subsidiary's stock was transferred to new shareholder, was a retaliatory eviction in violation of the Rental Housing Act, precluded summary judgment in the possession action. *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 2009 D.C. App. LEXIS 56 (2009).

Determination by ALJ of the Department of Consumer and Regulatory Affairs that landlord's unilateral termination of tenant's Section 8 contract was legal was essential to judgment on tenant's petition asserting that landlord's termination of its Section 8 participation was unlawful retaliation for tenant's complaint alleging housing code violations; had ALJ not made that determination he would not have been able to conclude on the record before him that action was not retaliatory. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Legality of landlord's unilateral termination of tenant's Section 8 contract was "actually litigated" by ALJ of the Department of Consumer and Regulatory Affairs when it heard and ruled on tenant's petition asserting that landlord's termination of its Section 8 participation was unlawful retaliation for tenant's complaint alleging housing code violations, even though tenant's petition did not specifically challenge the legality of landlord's actions, where landlord's actions were presumed retaliatory under the Rental Housing Act, and the only way that presumption could be overcome was by landlord's establishing that its actions were not retaliatory; ALJ had to consider and determine whether landlord's termination of contract was legally permissible. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Retaliatory eviction defense would not be extended to commercial leases, although commercial tenant claimed that landlord dramatically increased rent in retaliation for tenant's assistance to residential tenants in same building in pursuing housing violation complaints and commercial tenant's own numerous written and oral complaints about damages and deficiencies in building structure; there are fundamental differences between enforcement role played by commercial tenants as opposed to residential tenants, and commercial tenant

failed to adduce any evidence indicating commercial analog of appalling condition and shortages and inequality of bargaining power between tenant and landlord. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

Right to interpose retaliatory eviction defense based on breach of warrant of habitability would not be extended to commercial tenant; commercial tenants and landlords are more likely to have equal bargaining power, and commercial tenant will presumably have sufficient interest in demised premises to make needed repairs and means to make needed repairs himself or herself if necessary and then sue landlord for damages. *Espenschied v. Mallick*, 633 A.2d 388, 1993 D.C. App. LEXIS 285 (1993).

Tenant's breach of lease agreement in failing to provide landlord with duplicate keys to replacement locks on her door did not necessarily defeat her retaliatory eviction defense, if tenant could establish that she had provided landlord with access to apartment to make repairs. D.C. Code 1981, § 45-2552. *De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

Evidence created jury question as to whether tenant's letters to landlord regarding need for repairs to her apartment were the basis for landlord's eviction action, thus tenant was entitled to have jury consider retaliatory eviction defense to her admitted breach of her lease provision prohibiting tenant from changing locks. D.C. Code 1981, §§ 45-2552, 45-2552(b)(1). *De Szunyogh v. William C. Smith & Co.*, 604 A.2d 1, 1992 D.C. App. LEXIS 55 (1992).

A suit for retaliation may be brought as an affirmative action, and is not reserved exclusively for affirmative defenses. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

A lawsuit initiated by a landlord in retaliation for a tenant's exercise of his rights certainly falls under the scope of this section. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

Review.

Ruling by ALJ of the Department of Consumer and Regulatory Affairs (DCRA) that Section 8 law permitted landlord to end its Section 8 arrangement regarding tenancy in question notwithstanding local legal precedents and statutes regarding retaliation did not evince a material misconception of law given the language of the Rental Housing Act, related case law, federal legislation creating Section 8 program, and federal preemption considerations, even though Court of Appeals could well come to a different result if it eventually ruled upon issue, and thus ALJ's ruling could have collateral estoppel effect upon the parties bound by

it. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

§ 42-3505.03. Conciliation and arbitration service.

(a) There is established a conciliation and arbitration service ("service") within the Division.

(b) The service shall provide a voluntary, nonadversarial forum for the resolution of disputes arising between housing providers and tenants in the District.

(c) The staff of the service shall be designated by the Rent Administrator and shall be persons familiar with the problems of the law relating to housing-provider and tenant relations and with knowledge of conciliation and arbitration practices.

(d) Either a housing provider or a tenant may initiate a proceeding before the service.

(e) No person shall be compelled to attend a session of the service or participate in any proceeding before its staff. The results of any proceeding shall not be binding upon any party, except (1) to the extent provided in § 42-3505.04, or (2) with respect to a conciliation agreement, to the extent that a party to the proceeding agrees to be bound by the conciliation agreement. No evidence pertaining to a conciliation or arbitration proceeding shall be admissible in any judicial proceeding under other provisions of law relating to housing-provider and tenant disputes.

(July 17, 1985, D.C. Law 6-10, § 503, 32 DCR 3089.)

Section references. — This section is referred to in § 42-3505.04.

Prior Codifications. — 1981 Ed., § 45-2553.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

§ 42-3505.04. Arbitration.

(a) By mutual consent, the housing provider and tenant may submit for arbitration any dispute not satisfactorily resolved under § 42-3505.03.

(b) A request for arbitration shall be in writing.

(c) The Rent Administrator shall designate 3 members of the Division's staff, other than those who heard the dispute under § 42-3505.03, to serve as a panel of arbitrators.

(d) The arbitration panel shall issue a written recommendation to resolve the dispute within 10 days of the request.

(e) Agreements entered into between the housing provider and tenant under the panel's recommendation shall be approved by the Rent Administrator and shall be binding upon the parties.

(July 17, 1985, D.C. Law 6-10, § 504, 32 DCR 3089.)

Section references. — This section is referred to in § 42-3505.03.

Prior Codifications. — 1981 Ed., § 45-2554.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

§ 42-3505.05. Prohibition of discrimination against elderly tenants or families with children.

(a) It is unlawful for a housing provider to discriminate against families receiving or eligible to receive Tenant Assistance Program assistance, elderly tenants, or families with children when renting housing accommodations.

(b) Any protections provided by subsection (a) of this section and any penalties provided in § 42-3509.01 shall be in addition to any other provision of law.

(c) Allegations of violations of this section that are made by families receiving or eligible to receive Tenant Assistance Program assistance, by elderly tenants, or by families with children shall be promptly investigated and handled by the Department of Consumer and Regulatory Affairs, which shall provide the complaining party with a written report upon the conclusion of the investigation.

(July 17, 1985, D.C. Law 6-10, § 505, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 4, 34 DCR 5304.)

Cross references. — Discriminatory practices in real estate transactions, see § 2-140

Prior Codifications. — 1981 Ed., § 45-2555.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

§ 42-3505.06. Right of tenants to organize.

(a) For purposes of this section, the term:

(1) “CPI” means the average of the Consumer Price Index for the Washington-Baltimore Metropolitan Statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on November 30 of such year.

(2) “Tenant organizer” means a person who:

(A) Assists tenants in establishing and operating a tenant organization; and

(B) Is not an employee or representative of the current or prospective owner, the current or prospective manager, or an agent of such persons.

(b) Tenants shall have the right to:

(1) Self-organization;

(2) Form, join, meet, or assist one another within and without tenant organizations;

(3) Meet and confer through representatives of their own choosing with an owner;

(4) Engage in other concerted activities for the purpose of mutual aid and protection; and

(5) Refrain from such activity.

(c)(1) If a multifamily housing accommodation has a written policy favoring canvassing, any tenant organizer who is not a tenant shall be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations.

(2) If the multifamily housing accommodation does not have a consistently enforced, written policy against canvassing, the multifamily housing accommodation shall be treated as if it has a policy favoring canvassing.

(3) If a multifamily housing accommodation has a consistently enforced, written policy against canvassing, a tenant shall accompany a tenant organizer who is not a tenant while the tenant organizer is on the property of the multifamily housing accommodation. The tenant organizer who is not a tenant shall be afforded the same privileges and rights of access as other invited outside parties in the normal course of operations.

(d) No owner or agent of an owner of a multifamily housing accommodation shall interfere with the right of a tenant or tenant organizer to conduct the following activities related to the establishment or operation of a tenant organization:

(1) Distributing literature in common areas, including lobby areas;

(2) Placing literature at or under tenants' doors;

(3) Posting information on all building bulletin boards;

(4) Assisting tenants to participate in tenant organization activities;

(5) Convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of their lease, including any tenant's unit, a community room, a common area including lobbies, or other available space; provided, that an owner or agent of owner shall not attend or make audio recordings of such meetings unless permitted to do so by the tenant organization, if one exists, or by a majority of tenants in attendance, if a tenant organization does not exist;

(6) Formulating responses to owner actions, including:

(A) Rent or rent ceiling increases or requests for rent or rent ceiling increases;

(B) Proposed increases, decreases, or other changes in the housing accommodation's facilities and services; and

(C) Conversion of residential units to nonresidential use, cooperative housing, or condominiums;

(7) Proposing that the owner or management modify the housing accommodation's facilities and services; and

(8) Any other activity reasonably related to the establishment or operation of a tenant organization.

(e) Any owner, any person with an ownership interest in an owner, or an agent of an owner of a multifamily housing accommodation who knowingly violates any provision of this section, or any rule or regulation issued or promulgated in furtherance of this section, shall be subject to:

(1) A civil penalty for each violation not to exceed \$10,000, which shall be increased annually, beginning January 1, 2008, by an amount equal to \$10,000 multiplied by the percentage by which the CPI for the preceding year ending November 30 exceeds the CPI for the year ending November 30, 2006;

(2) An injunctive order respecting future behavior;

(3) Liability for damages to tenants, or a tenant organization or its members;

(4) Suspension or revocation of the owner or agent's business license or registration, during which period the rent for any rental unit in the housing accommodation shall not be increased; or

(5) Reasonable attorney's fees under § 42-3509.02.

(July 17, 1985, D.C. Law 6-10, § 506, as added Sept. 19, 2006, D.C. Law 16-160, § 2, 53 DCR 5389.)

Legislative history of Law 16-160. — Law 16-160, the “Right of Tenants to Organize Act of 2006”, was introduced in Council and assigned Bill No. 16-228 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on May 2, 2006, and June 6, 2006, respectively. Signed by the Mayor on June 26, 2006, it was assigned Act No. 16-401 and transmitted to both Houses of Congress for its review. D.C. Law 16-160 became effective on September 19, 2006.

§ 42-3505.07. Notice of lease termination by tenant who is a victim of an intrafamily offense.

(a) For purposes of this section, the term “qualified third party” means any of the following persons acting in their official capacity:

(1) A law enforcement officer, as defined in § 4-1301.02(14);

(2) A sworn officer of the D.C. Housing Authority Office of Public Safety;

(3) A health professional, as defined in § 3-1201.01(8); or

(4) A domestic violence counselor as defined [in] § 14-310(a)(2).

(b) If a tenant, who is a victim, or who is the parent or guardian of a minor victim, of an intrafamily offense or actions relating to an intrafamily offense, as defined in § 16-1001(8), provides a housing provider with a copy of an order under § 16-1005 in response to a petition filed by or on behalf of the tenant, the tenant shall be released from obligations under the rental agreement.

(c) If a tenant who is a victim, or who is the parent or guardian of a minor victim, of an intrafamily offense or actions relating to an intrafamily offense, as defined in § 16-1001(8), provides a housing provider with documentation signed by a qualified third party showing that the tenant has reported the intrafamily offense to the third party acting in his or her official capacity, the tenant shall be released from obligations under the rental agreement.

(d) The release from a rental agreement shall be effective upon the earlier of:

(1) Fourteen days after the housing provider receives:

(A) Written notice of the lease termination under this section; and

(B) Documentation pursuant to subsection (b) or (c) of this section; or

(2) Upon the commencement of a new tenancy for the unit.

(e) Any request by the tenant for termination of the rental agreement under this section shall be made within 90 days of the reported act, event, or

circumstance that was cited in the petition or reported to a qualified third party.

(f) Notwithstanding any penalty provided under a rental agreement, a tenant who is released from the rental agreement under this section shall be liable only for his or her rental payment obligation, pro-rated to the earlier of:

(1) The date the housing provider rents the unit to a new tenant or party who succeeds to the tenant's rights under the original agreement; or

(2) Fourteen days after the request for the release.

(g) This section shall not affect section 2908 of the Housing Regulations of the District of Columbia, effective August 11, 1955 (C.O. 55-1503; 14 DCMR § 308 through § 311), or the tenant's liability for delinquent, unpaid rent, or other sums owed to the housing provider before the lease was terminated by the tenant under this section.

(July 17, 1985, D.C. Law 6-10, § 507, as added Mar. 14, 2007, D.C. Law 16-273, § 2(c), 54 DCR 859; Mar. 25, 2009, D.C. Law 17-368, § 4(h)(2), 56 DCR 1338.)

Effect of amendments. — D.C. Law 17-368, in subsecs. (b) and (c), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

Legislative history of Law 16-273. — For Law 16-273, see notes following § 42-3505.01.

Legislative history of Law 17-368. — For Law 17-368, see notes following § 42-3505.01.

§ 42-3505.08. Victims of an intrafamily offense protection — Change locks and notice.

(a) Upon the written request of a tenant who is the victim of an intrafamily offense, as defined in § 16-1001(8), a housing provider shall change the locks to all entrance doors to that tenant's unit within 5 business days; provided, that if the perpetrator of the intrafamily offense is a tenant in the same dwelling unit as the tenant who makes the request, the tenant who makes the request shall provide the landlord with a copy of a protective order issued pursuant to § 16-1005 ordering the perpetrator to stay away from, or avoid, the tenant who makes the request, any other household member, or the dwelling unit. If the perpetrator of the intrafamily offense is not, or is no longer, a tenant in the same dwelling unit as the tenant who makes the request, no documentation of the intrafamily offense shall be required.

(b) The housing provider shall pay the cost of changing the locks. No later than 45 days after the housing provider provides the tenant who makes the request with documentation of the cost of changing the locks, the tenant shall reimburse the housing provider for such cost and any associated fee; provided, that the fee shall not exceed the fee imposed on any other tenant for changing the locks under any other circumstances.

(c) Upon receipt of a copy of the court order pursuant to subsection (a) of this section, unless the court orders that the perpetrator be allowed to return to the unit for some purpose, the housing provider shall not provide the perpetrator with keys to the unit or otherwise permit the perpetrator access to the unit or to property within the unit.

(d) The housing provider shall not be liable to the perpetrator for any civil

damages as a result of actions the housing provider takes to comply with this section.

(e) This section shall not be construed to relieve the perpetrator of any obligation under a lease agreement or any other liability to the housing provider.

(July 17, 1985, D.C. Law 6-10, § 508, as added Mar. 14, 2007, D.C. Law 16-273, § 2(c), 54 DCR 859; Mar. 25, 2009, D.C. Law 17-368, § 4(h)(3), 56 DCR 1338.)

Effect of amendments. — D.C. Law 17-368, in subsec. (a), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

Legislative history of Law 16-273. — For Law 16-273, see notes following § 42-3505.01.

Legislative history of Law 17-368. — For Law 17-368, see notes following § 42-3505.01.

Subchapter VI. Conversion or Demolition of Rental Housing for Hotels, Motels, or Inns.

§ 42-3506.01. Conversion.

Notwithstanding any other provision of law, no person shall convert and the Mayor shall not permit the conversion of any housing accommodation or rental unit into a hotel, motel, inn, or other transient residential occupancy unit or accommodation.

(July 17, 1985, D.C. Law 6-10, § 601, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2561.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

CASE NOTES

In general.

Applicant's use of property as bed and breakfast was lawful under certificate of occupancy applicant had received a number of years previously, authorizing use as “rooming house,” and thus, there was no basis to support revoca-

tion of certificate, even if use more closely fit definition of “inn,” and even though regulations have subsequently been changed. *Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 640 A.2d 179, 1994 D.C. App. LEXIS 53 (1994).

§ 42-3506.02. Demolition.

(a) Notwithstanding any other provision of law, no person shall demolish and the Mayor shall not permit the demolition of any housing accommodation or rental unit for the purpose of constructing or expanding a hotel, motel, inn, or other transient residential accommodation.

(b) No person shall construct or expand and the Mayor shall not permit the construction or expansion of a hotel, motel, inn, or other transient residential occupancy on the site of a housing accommodation or rental unit demolished after July 17, 1985.

(July 17, 1985, D.C. Law 6-10, § 602, 32 DCR 3089.)

Cross references. — Housing Finance Agency, exempt housing projects, displaced tenants, establishment of procedures for relocation assistance, see § 42-2703.08.

Rental housing, tenant evictions, notice to vacate, relocation assistance, see § 42-3505.01.

Prior Codifications. — 1981 Ed., § 45-2562.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Short title. — Short title: See Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3506.01.

Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance.

§ 42-3507.01. Notice of right to assistance.

No housing provider shall substantially rehabilitate, demolish, or discontinue any housing accommodation unless there has first been served upon each tenant residing in the housing accommodation a written notice of intent to rehabilitate, demolish, or discontinue the housing accommodation in accordance with § 42-3505.01(f), (g), (h), or (i), as appropriate. The notice shall advise the tenants of their right to relocation assistance under this chapter or any other District law, and the procedures for applying for the assistance. The Rental Housing Commission shall prescribe the content of the notice. No tenant may be evicted from a housing accommodation which the housing provider intends to substantially rehabilitate, demolish, or discontinue housing use, or which the housing provider intends to sell to another person who, to the housing provider's knowledge, intends to substantially rehabilitate, demolish, or discontinue housing use, unless the requirements of this section have been met. Nothing contained in this section shall be construed to limit a housing provider's right to evict a tenant for nonpayment of rent or violation of an obligation of the tenancy, if the action to evict is in compliance with § 42-3505.01.

(July 17, 1985, D.C. Law 6-10, § 701, 32 DCR 3089; June 22, 2006, D.C. Law 16-140, § 2(b), 53 DCR 3686.)

Prior Codifications. — 1981 Ed., § 45-2571.

Effect of amendments. — D.C. Law 16-140 substituted "in accordance with section § 42-3505.01(f), (g), (h), or (i)" for "in accordance with § 42-3505.01(g), (h), or (i)".

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 45-3501.01.

Legislative history of Law 16-140. — For Law 16-140, see notes following § 42-3505.01.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

§ 42-3507.02. Eligibility assistance.

Each housing provider commencing substantial rehabilitation, demolition, or housing discontinuance, on or after July 17, 1985, shall pay relocation

assistance in an amount calculated under § 42-3507.03 to all tenants of the housing accommodation who:

(1) Were living in the rental units contained in the housing accommodation from which they are being displaced at the time the notice required by § 42-3505.01 is given; and

(2) Are displaced from rental units because the housing accommodation in which they are located is to be substantially rehabilitated, demolished, or discontinued.

(July 17, 1985, D.C. Law 6-10, § 702, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2572.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3507.01.

§ 42-3507.03. Payments.

(a) Until the Mayor establishes the amount of relocation assistance pursuant to subsection (b) of this section, the amount of relocation assistance payable to a displaced tenant shall be calculated as follows:

(1) Except as provided in paragraph (2) of this subsection, relocation assistance in the amount of \$300 for each room in the rental unit shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of this paragraph, the term “room” in a rental unit means any space 60 square feet or larger which has a fixed ceiling and a floor and is subdivided with fixed partitions on all sides, but does not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(2) Relocation assistance in the amount of \$150 for each pantry, kitchen, storage area, and utility room that exceeds 60 square feet in area shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings.

(b) The Mayor shall establish the amount to be paid tenants for relocation assistance within 30 days of June 22, 2006. Thereafter, the Mayor shall, by rule, adjust the amount to be paid tenants for relocation assistance not more than once every 12 months and not less than once every 3 years. The amount of relocation assistance shall reflect the cost of moving, including transporting personal property, packing and unpacking, insurance of property while in transit, storage of personal property, the disconnection and re-connection of utilities, and any other reasonable factor, within the Washington-Baltimore Standard Metropolitan Statistical Area.

(c) Relocation assistance shall be paid to eligible tenants not later than 24 hours before the date the rental unit is to be vacated by the tenants or subtenants, if the housing provider has received at least 10 days, excluding Saturdays, Sundays, and holidays, advance written notice of the date upon which the unit is to be vacated. Where the tenant does not provide the housing provider with at least a 10-day notice, the relocation assistance shall be paid within 30 days after the unit is vacated.

(d) Payment of relocation assistance shall not be required with respect to any rental unit which is the subject of an outstanding judgment for possession obtained by the housing provider or housing provider's predecessor in interest against the tenants or subtenants for a cause of action whether the cause of action arises before or after the service of the notice of intention to rehabilitate, demolish, or discontinue housing use. If the judgment for possession is based upon nonpayment of rent and arises after the notice of intent to rehabilitate, demolish, or discontinue housing use has been given, then relocation assistance shall be required in an amount reduced by the amount determined to be due and owing to the housing provider by the court rendering the judgment for possession.

(July 17, 1985, D.C. Law 6-10, § 703, 32 DCR 3089; June 22, 2006, D.C. Law 16-140, § 2(c), 53 DCR 3686.)

Section references. — This section is referred to in § 42-3507.02.

Prior Codifications. — 1981 Ed., § 45-2573.

Effect of amendments. — D.C. Law 16-140, in the lead-in language in subsec. (a), substituted "Until the Mayor establishes the amount of relocation assistance pursuant to subsection (b) of this section, the amount of relocation assistance" for "The amount of relocation assistance"; in par. (a)(1), substituted "the amount of \$300" for "the amount of \$ 150"; in par. (a)(2), substituted "the amount of \$150" for "the amount of \$ 75"; and rewrote subsec. (b), which had read as follows: "(b) The Mayor shall adjust the amount to be paid tenants for

relocation assistance from time to time in order to reflect changes in the cost of moving within the Washington, D.C., Standard Metropolitan Statistical Area (SMSA). The adjustments shall be made under subchapter I of Chapter 5 of Title 2, not more than once in any calendar year."

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 16-140. — For Law 16-140, see notes following § 42-3505.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3507.01.

§ 42-3507.04. Relocation advisory services.

Whenever a building in the District is converted from rental to condominium units, substantially rehabilitated or demolished, or discontinued from housing use, the Relocation Assistance Office of the Department of Housing and Community Development shall provide relocation advisory services for tenants who move from the building. These services shall include:

- (1) Ascertaining the relocation needs for each household;
- (2) Providing current information on the availability of equivalent substitute housing;
- (3) Supplying information concerning federal and District housing programs; and
- (4) Providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation.

(July 17, 1985, D.C. Law 6-10, § 704, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2574.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 45-2501.

Termination of Law 6-10. — See Historical and Statutory Notes following § 45-2571.

§ 42-3507.05. **Tenant hot line.**

The Department of Consumer and Regulatory Affairs shall provide for the continuation of a tenant hot line. The primary purpose of the tenant hot line is to provide assistance to low- and moderate-income tenants. To carry out this purpose, the functions and responsibilities shall include, but not be limited to, the following:

- (1) Answering rent control procedural questions, and directing tenants toward possible courses of action in resolving problems;
- (2) Providing advice on housing regulation violations;
- (3) Explaining rent increases;
- (4) Providing guidance on emergency shelter;
- (5) Providing guidance on the Tenant Assistance Program;
- (6) Providing guidance in resolving problems involving water, heating, repairs, and other matters;
- (7) Providing advice on possible action in response to allegations of discrimination, harassment, or neglect by housing providers;
- (8) Answering preliminary questions about remedies through the courts;
- (9) Providing guidance when tenants are faced with eviction; and
- (10) Providing guidance on other tenant problems.

(July 17, 1985, D.C. Law 6-10, § 705, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2575.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 45-2501.

Termination of Law 6-10. — See Historical and Statutory Notes following § 45-2571.

Subchapter VIII. New and Vacant Rental Housing and Distressed Property.

§ 42-3508.01. **Declaration of policy.**

In order to assist in stimulating the expansion of the supply of decent, safe, and affordable rental housing for low- to moderate-income persons in the District, the Council declares as its policy that the Mayor and the Council shall:

- (1) Use the District's bonding authority to provide low-interest financing for the construction of new rental units and the rehabilitation of vacant rental units; and
- (2) Provide tax abatements and other incentives for the construction of new rental units and the rehabilitation of vacant rental units.

(July 17, 1985, D.C. Law 6-10, § 801, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2581.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 45-2501.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C.

Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

Editor's notes. — For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Mayor authorized to issue rules: Section 2(d) of D.C. Law 10-155 provided in part that pursuant to subchapter 1 of Chapter 5 of Title 2, the Mayor shall issue rules to implement this

subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter 1 of Chapter 5 of Title 2.

§ 42-3508.02. Tax abatement for new or rehabilitated vacant rental housing.

(a) There shall be an 80% reduction of the property tax liability during the first year newly constructed rental housing accommodations become available for rental. Tax for succeeding years shall be increased by increments of 16% of the full tax liability, until the time the full liability absent this provision, is reached.

(b) When vacant rental accommodations which have been rehabilitated become available for rental, the provisions of subsection (a) of this section shall apply to the amount by which the tax assessment was increased due to rehabilitation.

(c) When vacant rental accommodations are being rehabilitated under this subchapter, the Mayor may defer or forgive any indebtedness owed the District or defer or forgive outstanding tax liens.

(d) A project eligible for tax abatement or deferral or forgiveness of any indebtedness to the District or deferral or forgiveness of tax liens under subsections (a), (b), and (c) of this section shall be subject to certification by the Mayor that it is in the best interest of the District and is consistent with the District's rental property needs in terms of its location, type, and variety of sizes or rental units.

(e) Repealed.

(f) This section shall not apply to property which receives tax relief pursuant to §§ 47-857.03 through 47-857.10.

(July 17, 1985, D.C. Law 6-10, § 802, 32 DCR 3089; Aug. 25, 1994, D.C. Law 10-155, § 2(c), 41 DCR 4873; Apr. 19, 2002, D.C. Law 14-114, § 602, 49 DCR 1468.)

Cross references. — Establishment of real property tax rates, see § 47-812.

Section references. — This section is referred to in §§ 42-3508.04, 47-857.02, and 47-859.02.

Prior Codifications. — 1981 Ed., § 45-2582.

Effect of amendments. — D.C. Law 14-114 added subsec. (f).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical

and Statutory Notes following § 42-3501.01.

Legislative history of Law 10-155. — For legislative history of D.C. Law 10-155, see Historical and Statutory Notes following § 42-3508.06.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 42-2102.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3508.01.

§ 42-3508.03. Deferral or forgiveness of water and sewer fees for rehabilitated vacant rental housing.

(a) Where vacant rental accommodations are being rehabilitated under this subchapter, the Mayor may defer or forgive any outstanding water and sewer fees owed by the property.

(b) A project under this section shall be subject to certification by the Mayor that it is in the best interest of the District, and is consistent with the District's rental property needs in terms of its location, type, and variety of sizes of rental units.

(July 17, 1985, D.C. Law 6-10, § 803, 32 DCR 3089.)

Section references. — This section is referred to in § 42-3508.04.

Prior Codifications. — 1981 Ed., § 45-2583.

Legislative history of Law 6-10. — For

legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3508.01.

§ 42-3508.04. Distressed properties improvement program.

(a) The Mayor may establish and administer a distressed property improvement program to assist those housing accommodations which meet the requirements of § 42-3501.03(9).

(b) The distressed property improvement program may include any or all of the following:

- (1) A 5-year deferral or moratorium on real property taxes;
- (2) Deferral or forgiveness of water and sewer charges in arrears;
- (3) Deferral or forgiveness of tax liens;
- (4) Deferral or forgiveness of any indebtedness owed to the District;
- (5) Low-interest or no-interest loans; and
- (6) Financial grants.

(c) Nothing in subsection (b) of this section or this subchapter shall be construed as creating a right or entitlement for any housing provider or other person.

(d) Distressed properties and new or rehabilitated vacant rental housing under §§ 42-3508.02 and 42-3508.03 shall have priority over other properties for participation in the Tenant Assistance Program so long as the tenants who reside in distressed property and who receive assistance from the Tenant Assistance Program are doing so consistent with the provisions of § 42-3503.03(c).

(July 17, 1985, D.C. Law 6-10, § 804, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(h), 33 DCR 7836.)

Section references. — This section is referred to in §§ 42-407, 42-3503.02, and 42-3508.05.

Prior Codifications. — 1981 Ed., § 45-2584.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-192. — For legislative history of D.C. Law 6-192, see Historical and Statutory Notes following § 42-3502.05.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3508.01.

§ 42-3508.05. Distressed property improvement plan.

(a) Upon petition by the housing provider, the Mayor may initiate the development of a distressed property improvement plan utilizing any or all of the mechanisms in § 42-3508.04(b). The development of the plan shall involve the participation of the housing provider, the tenants or tenants' association and may include the mortgagor.

(b) A distressed property improvement plan may include, but not be limited to:

- (1) A schedule of repairs and capital improvements;
- (2) A schedule of services and facilities;
- (3) A schedule of rents and rent increases;
- (4) A schedule of mortgage payments which may reflect additional long-term loans to the housing provider for the housing accommodation;
- (5) A schedule of additional capital investment in the housing accommodation by the housing provider; and
- (6) A schedule of property tax payments, which may also reflect moratoria or deferrals on property tax payments and the abatement or deferral of up to 100% of any tax outstanding on the housing accommodation.

(c) In the development of the distressed property improvement plan, the Mayor may consider:

- (1) The interests of tenants in achieving decent, safe, and sanitary housing at affordable rents;
- (2) The long-term interest of the housing provider in achieving a sound investment and a reasonable return on the housing provider's investment;
- (3) The long-term interest of the mortgagor in achieving a financially secure mortgage; and
- (4) The long-term interest of the District in achieving a decent, safe, and sanitary housing accommodation which is fiscally sound and which generates and pays its fair property tax assessment.

(July 17, 1985, D.C. Law 6-10, § 805, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2585.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical

and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3508.01.

§ 42-3508.06. Incentives for development of single-room-occupancy housing.

(a) The Mayor may provide tax abatements and deferral or forgiveness of

water and sewer fees and other indebtedness to the District as incentives for the development of single-room-occupancy housing for low- and moderate-income tenants. These incentives shall be provided pursuant to negotiations and written agreements between the Mayor and housing providers engaged in the development or operation of single-room-occupancy housing accommodations. In these negotiations and written agreements, the Mayor may establish a formula for abating property tax liability for properties developed pursuant to this section for a period of not more than 10 years beginning during the first year that newly-constructed or rehabilitated single-room-occupancy housing becomes available for occupancy.

(b) The incentives provided by this section shall be available for new construction, renovation of any vacant rental housing accommodation, or renovation of any non-housing property, whether vacant or not, for single-room-occupancy housing.

(c) To qualify for the incentives provided by this section, the housing provider shall demonstrate to the satisfaction of the Mayor that the single-room-occupancy housing meets the following minimum standards:

(1) Rental rates are affordable for low- and moderate-income tenants and reflect costs offset by the tax abatements and deferral or forgiveness of indebtedness to the District provided pursuant to this section;

(2) The location is in compliance with the Zoning Regulations of the District of Columbia;

(3) Each rental unit includes no less than 95 square feet of space, and a clothing storage unit;

(4) Toilet and shower or bathing facilities are provided on each floor where tenants reside, in a reasonable size to meet the needs of the tenants residing on that floor;

(5) A common-space day room, kitchen, and laundry facilities sufficient to meet the needs of all tenants at 100% occupancy are provided;

(6) A 24-hour security system, either manual or electronic, is provided; and

(7) The housing accommodation has a resident manager who resides on the premises.

(d) Within 180 days from August 25, 1994, the Mayor shall compile, provide to the Council, and publish in the District of Columbia Register an initial list of District-owned and privately-owned properties in the District that are available and suitable for the development of single-room-occupancy housing in accordance with this section. At least annually thereafter, the Mayor shall publish a revised list and provide a written report to the Council regarding the status of single-room-occupancy housing development at these and other sites.

(July 17, 1985, D.C. Law 6-10, § 806, as added Aug. 25, 1994, D.C. Law 10-155, § 2(d), 41 DCR 4873.)

Prior Codifications. — 1981 Ed., § 45-2586.

Legislative history of Law 10-155. — Law 10-155, the “Single-Room-Occupancy Rental Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-17, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the

Mayor on July 8, 1994, it was assigned Act No. 10-271 and transmitted to both Houses of Congress for its review. D.C. Law 10-155 became effective on August 25, 1994. 6-10.

Editor's notes. — Termination of Law: See Historical and Statutory Notes following § 42-3508.01.

Subchapter IX. Miscellaneous Provisions.

§ 42-3509.01. Penalties.

(a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

(b) Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

(c) Any housing provider who has provided relocation assistance under this chapter may bring a civil action to recover the amount of relocation assistance paid to any person who was not eligible to receive the assistance.

(d) Any person who knowingly or wilfully makes a false or fraudulent application, report, or statement in order to obtain, or for the purpose of obtaining, any grant or payment under the Tenant Assistance Program, or any person ceasing to become eligible for the grant or payment and who does not immediately notify the Department of his or her ineligibility, shall be fined not less than \$50 and not more than \$5,000 for each offense. A person who knowingly and wilfully makes false or fraudulent reports or statements, or of failing to notify promptly the Department of the person's ineligibility, shall repay to the District government all amounts paid by the District government in reliance on the false or fraudulent application, report, or statement, or all amounts paid after eligibility ceases, and shall be liable for interest on the amounts at the rate of $\frac{1}{2}$ of 1% per month until repaid.

(e) A housing provider who discriminates against a family receiving or eligible to receive Tenant Assistance Program assistance, an elderly tenant, or a family with children when renting housing accommodations shall be fined not more than \$5,000 for each violation. Repeat violators shall be fined not more than \$15,000 for each violation. Nothing in this subsection shall be construed as requiring the rental of a rental unit to a tenant with a child in the case of a single-room-occupancy rental unit designed for occupancy by a single adult living alone.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of subsections (b), (d), and (e) of this section, or any rules or regulations issued under the authority of these subsections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of these subsections shall be pursuant to Chapter 18 of Title 2.

(g) Any person who knowingly, wilfully, and in bad faith makes a false or fraudulent statement to receive a tax credit for not assessing capital improvement increases to an elderly tenant or tenant with a disability shall be subject to a fine of not more than \$5,000 for each violation.

(July 17, 1985, D.C. Law 6-10, § 901, 32 DCR 3089; Oct. 5, 1985, D.C. Law 6-42, § 408, 32 DCR 4450; Feb. 24, 1987, D.C. Law 6-167, § 3, 33 DCR 6732; Oct. 2, 1987, D.C. Law 7-30, § 5, 34 DCR 5304; Mar. 8, 1991, D.C. Law 8-237, § 23, 38 DCR 314; Sept. 26, 1992, D.C. Law 9-154, § 2(c), 39 DCR 5673; Aug. 25, 1994, D.C. Law 10-155, § 2(e), 41 DCR 4873; Aug. 5, 2006, D.C. Law 16-145, § 2(a), 53 DCR 4889; Apr. 24, 2007, D.C. Law 16-305, § 67(f), 53 DCR 6198.)

Section references. — This section is referred to in § 42-3505.05.

Prior Codifications. — 1981 Ed., § 45-2591.

Effect of amendments. — D.C. Law 16-145, in subsec. (a), substituted “rent charged” for “rent ceiling”.

D.C. Law 16-305, in subsec. (g), substituted “tenant or tenant with a disability” for “or disabled tenant”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of Tenant Assistance Program Amendment Temporary Act of 1987 (D.C. Law 7-48, December 10, 1987, law notification 34 DCR 8107).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Rent Control Reform Emergency Amendment Act of 2006 (D.C. Act 16-470, July 31, 2006, 53 DCR 6772).

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-167. — For legislative history of D.C. Law 6-167, see Historical and Statutory Notes following § 42-3502.05.

Legislative history of Law 7-30. — For legislative history of D.C. Law 7-30, see Historical and Statutory Notes following § 42-3502.01.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-154. — For legislative history of D.C. Law 9-154, see Historical and Statutory Notes following § 42-3502.06.

Legislative history of Law 10-155. — For legislative history of D.C. Law 10-155, see Historical and Statutory Notes following § 42-3508.06.

Legislative history of Law 16-145. — For Law 16-145, see notes following § 42-3502.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 42-820.

Termination of Law 6-10. — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

Editor’s notes. — Application of 9-154: Section 3 of D.C. Law 9-154 provided that the act shall not apply to any increase in a rent ceiling for a rental unit, or to any increase in the rent charged for a rental unit, when the capital

improvement petition has been approved by the Rent Administrator and the resultant rent increase was implemented prior to September 26, 1992.

For temporary amendment to the termina-

tion provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

CASE NOTES

ANALYSIS

Construction and application.

Punitive damages.

Rent rollback or refund.

Substantial reduction in services.

Treble recovery.

Weight and sufficiency of evidence.

Willful or knowing violations.

Construction and application.

Rental Housing Act provision that authorized imposition of civil fines up to \$5,000 for infractions of the Act and treble damages was not void for arbitrariness; statute required that civil fine be imposed only for "willful" infractions and treble damages only in the event of "bad faith." *Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n*, 952 A.2d 190, 2008 D.C. App. LEXIS 298 (2008).

Rental Housing Act is designed to stabilize rents and in establishing rent ceilings commands that violator shall be held liable for the amount by which the entire amount of money demanded, received or charged exceeds the applicable rent ceiling. D.C. Code 1981, §§ 45-2503, 45-2591(a). *Kapusta v. District of Columbia Rental Hous. Comm'n*, 704 A.2d 286, 1997 D.C. App. LEXIS 249 (1997).

Rent control statute providing that any person who "knowingly" demands or receives rent in excess of maximum allowable rent is liable for amount by which rent exceeds applicable rent ceiling or for treble such amount [D.C. Code 1981, § 45-1591(a)] was reasonably interpreted by Rental Housing Commission to require only knowledge of essential facts bringing conduct within reach of statute and not to require actual knowledge of unlawfulness of act or omission. *Quality Management, Inc. v. District of Columbia Rental Housing Com.*, 505 A.2d 73, 1986 D.C. App. LEXIS 297 (1986).

A suit for retaliation may be brought as an affirmative action, and is not reserved exclusively for affirmative defenses. *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

Punitive damages.

Collateral estoppel did not require award of punitive damages to evicted tenant on the basis of bad-faith determination made by the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs, in view of the discretionary nature of such an award and the egregiousness of the

conduct that must underlie such damages. *Camacho v. 1440 Rhode Island Ave. Corp.*, 620 A.2d 242, 1993 D.C. App. LEXIS 26 (1993).

Rent rollback or refund.

Tenant was entitled to a "refund" of excess rent demanded, even though it was never paid, where landlord attempted to charge an illegal level of rent. *Edelin v. Campbell (In re Estate of Blackwell)*, 983 A.2d 320, 2009 D.C. App. LEXIS 576 (2009).

Hearing examiner failed to adequately explain basis for awarding tenant refund of rent overcharges for three-month period during which tenant vacated apartment, requiring that action be remanded on that issue. *Price v. District of Columbia Rental Housing Com.*, 512 A.2d 263, 1986 D.C. App. LEXIS 369 (1986).

Finding of rent administrator that landlord violated housing regulations without finding that there was substantial decrease in services warranted only rollback in rent charged rather than rent ceiling reduction under statute [D.C. Code 1980 Supp. § 45-1692] which authorizes reduction in rent ceiling upon substantial reduction in services; thus, rent ceiling was never validly lowered so as to trigger landlord's liability for receipt of excess rent and treble damages. D.C. Code 1980 Supp. § 45-1699.24(a). *Afshar v. District of Columbia Rental Housing Com.*, 504 A.2d 1105, 1986 D.C. App. LEXIS 275 (1986).

Substantial reduction in services.

The fact that tenant suffered a substantial reduction in services when he was without heat when the boiler accidentally broke down did not automatically entitle tenant to a rent rebate; remand was necessary to determine whether the loss of services was unexpected, whether the restoration of heat within two days was prompt, and, if not, whether the landlord's failure to abate rent was willful. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

Right of tenants to a monetary refund because loss of air conditioning in their apartments during time in question amounted to a substantial reduction in service [D.C. Code 1980 Supp. § 45-1692] depended upon whether tenants were substantially deprived of a service which landlord contracted to provide, not whether average daily temperature of 72 degrees during time in question was insufficient to activate an air conditioning system set to

maintain a temperature of 78 degrees. *Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1985 D.C. App. LEXIS 544 (1985).

Forty-five-day loss of air conditioning in tenants' apartments during summer months in question supported decision of the Rental Housing Commission to order a monetary refund to tenants under the Rental Housing Act [D.C. Code 1980 Supp. § 45-1692] on ground that tenants were substantially deprived of a service which landlord had contracted to provide. *Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1985 D.C. App. LEXIS 544 (1985).

Clause in lease agreement relieving landlord from liability for discontinuance of heat, hot or cold water, air conditioning, elevator service, or for discontinuance of any other service could not be read to defeat tenants' rights or landlord's obligations under the Rental Housing Act [D.C. Code 1980 Supp. § 45-1692], and, hence, could not preclude a monetary refund to tenants when loss of air conditioning substantially deprived tenants of a service which landlord had contracted to provide. *Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1985 D.C. App. LEXIS 544 (1985).

Treble recovery.

Rental Housing Commission did not abuse its discretion in deciding that Commission's loss of records that housing provider contended supported its claim to higher rent constituted exceptional circumstances precluding sanction of treble damages against housing provider who overcharged rent. *D.C. Code 1981, § 45-2591(a)*. *Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n*, 682 A.2d 178, 1996 D.C. App. LEXIS 170 (1996).

Hearing examiner's decision to assess treble damages only prospectively from the date the Reid decision was published until the date in which the landlords finally filed their claim of exemption from rent control statutes was reasonable, where prior to Reid the circumstances in which a landlord represented by an agent could be held to have acted knowingly in violation of the rent control statutes had been unclear. *D.C. Code 1981, §§ 45-1503(12), 45-1591, 45-1591(a)* (repealed). *Boer v. District of Columbia Rental Housing Com.*, 564 A.2d 54, 1989 D.C. App. LEXIS 186 (1989).

Rental Housing Commission's award of trebled rent overcharges, due to landlord's failure to timely register his housing accommodation, was justified, despite landlord's contention that nonregistration constituted "technical" violation, that tenants had full use of property, that he attempted to comply with registration requirements, and that government error caused

his nonregistration. *D.C. Code 1981, § 45-1591(a)* (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Landlord with actual knowledge of rent ceiling did not have "good cause" for overcharging tenant, within meaning of regulation which requires trebling of refund absent such finding, though landlord may have acted in good faith, in that she did not understand working of rent control law, and thus Rental Housing Commission had authority to treble tenant's refund. *Webb v. District of Columbia Rental Housing Com.*, 505 A.2d 467, 1986 D.C. App. LEXIS 284 (1986).

Provision of the Rental Housing Act [D.C. Code 1980 Supp. § 45-1699.24] authorizing the rent administrator upon ordering a refund for a tenant to treble the amount by which the rent exceeded the applicable rent ceiling and/or rollback of the rent must be read as drawing a distinction between the refund and a rollback and, hence, as authorizing the rent administrator to treble the damages when ordering a refund as distinguished from a rollback of rent. *Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1985 D.C. App. LEXIS 544 (1985).

A rent administrator ordering a refund of rent under the Rental Housing Act [D.C. Code 1980 Supp. § 45-1699.24] for treble the amount by which the rent exceeds the applicable ceiling is not required to find that the landlord has acted willfully, knowingly or in bad faith, but is only required to find that services to tenant have been reduced by landlord without a concomitant proportional reduction in rent. *Interstate General Corp. v. District of Columbia Rental Housing Com.*, 501 A.2d 1261, 1985 D.C. App. LEXIS 544 (1985).

Tenants' action brought in superior court pursuant to D.C. Code 1976 Supp. § 45-1673 to enforce treble damage award affirmed by Rental Housing Commission was premature, but suit would stand, where court stayed its hand until after all necessary action for finality had been taken. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

Weight and sufficiency of evidence.

There was substantial evidence in support of finding of rental administrator that managing agent acted willfully and in bad faith in overcharging tenant rent in excess of allowable ceiling, as required to impose civil fine of \$2,500 and award tenant treble damages of \$4,914; managing agent was sophisticated business that knew or should have known the rules regarding recapture of vacant unit rent adjustment, and agent continued to impose rent increases after such rent adjustment had expired. *Bernstein Mgmt. Corp. v. D.C. Rental Hous.*

Comm'n, 952 A.2d 190, 2008 D.C. App. LEXIS 298 (2008).

Willful or knowing violations.

Mere failure of housing provider to rebut Rental Housing Act's presumption of retaliation, which presumption is based on conduct by a housing provider that takes place within six months after a tenant has done certain acts, does not establish that housing provider acted willfully, as is required under Act for imposition of civil fine of up to \$5,000. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

Housing provider acts "willfully," within meaning of provision of Rental Housing Act allowing civil fine of up to \$5,000 if housing provider willfully collects rent increase after it has been disapproved under Act's chapter addressing rental housing generally, makes false statement in any document filed under the chapter, commits any other act in violation of the chapter or any final administrative order issued under the chapter, or fails to meet obligations required under the chapter, only if housing provider intended to violate Act or was aware that it was violating a provision of Act. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

Proper remedy, upon determination by Rental Housing Commission (RHC) that administrative law judge (ALJ) had not made necessary finding, for imposition of civil fine under Rental Housing Act for housing provider's retaliation against tenant for joining tenant organization, that housing provider had acted willfully was for RHC to remand to ALJ for necessary findings of fact, rather than to vacate the civil fine imposed by ALJ, where RHC had not found the record would not sup-

port a finding of willfulness. *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 2005 D.C. App. LEXIS 137 (2005).

The Rental Housing Commission is authorized to impose fines for willful violations of rent control laws, despite contention that criminal nature of the penalty compels criminal prosecution. D.C. Code 1981, § 45-2591(a); § 45-1591(a, b) (repealed). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Evidence was sufficient to support finding of willful violations of rent control by landlord, so as to warrant imposition of fine, in light of her misrepresentation of use and occupancy of units, retaliation against tenant who filed complaint, and increasing rents in disregard of prior decision. D.C. Code 1981, § 45-2591(b). *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Finding that landlord knowingly charged rent in excess of rent ceiling was sufficiently supported by evidence which included fact that landlord had previously attempted registration with Rental Accommodations Office and registration form, which landlord signed, listed legal rent for apartment. D.C. Code 1981, § 45-1591(a). *Webb v. District of Columbia Rental Housing Com.*, 505 A.2d 467, 1986 D.C. App. LEXIS 284 (1986).

Sufficient evidence established that landlord had "knowingly" charged rents above lawful maximum and was thus liable under rent control statute [D.C. Code 1981, § 45-1591(a)(2)] for treble the amount by which rents charged exceeded maximum lawful rentals. *Webb v. District of Columbia Rental Housing Com.*, 505 A.2d 467, 1986 D.C. App. LEXIS 284 (1986).

§ 42-3509.02. Attorney's fees.

The Rent Administrator, Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney's fees to the prevailing party in any action under this chapter, except actions for eviction authorized under § 42-3505.01.

(July 17, 1985, D.C. Law 6-10, § 902, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., § 45-2592.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3509.01.

CASE NOTES

ANALYSIS

Construction and application.

Determination of amount.
Housing provider.
Pro se attorney.

Tenants.

Construction and application.

Tenants who sought administrative review of decision of hearing examiner of Housing Regulation Administration, Rental Accommodations and Conversion Division granting apartment building owner's petition for substantial rehabilitation were not required to raise issue of entitlement to fee award before the hearing examiner until they prevailed before the Rental Housing Commission; tenants could not have raised issue previously before hearing examiner or in appeal to Commission because they were not the prevailing party until Commission ruled in their favor. *Loney v. D.C. Rental Hous. Comm'n*, 11 A.3d 753, 2010 D.C. App. LEXIS 549 (2010).

Statute, which permits court to award reasonable attorney fees to prevailing party in action under chapter governing landlord-tenant relationship, does not automatically repeal American rule, does not merely incorporate vexatious conduct exception to American rule, but creates presumptive award of attorney fees to prevailing party, which may be withheld, in court's discretion, if equities indicate otherwise. D.C. Code 1981, § 45-2592. *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

As a remedy for civil contempt in action under this chapter, the court may award attorney fees to wholly government-funded legal services organization. *Kariuki v. Brown*, 116 WLR 601 (Super. Ct. 1988).

Determination of amount.

Attorney fee award to litigants whose opponents were found to have acted in bad faith in bringing contempt proceeding was properly evaluated by examining total number of hours claimed to determine number of hours spent in defense of contempt motion, multiplied by actual, reasonable hourly rate charge, to arrive at lodestar figure. D.C. Code 1981, § 45-2592. *General Federation of Women's Clubs v. Iron Gate Inn, Inc.*, 537 A.2d 1123, 1988 D.C. App. LEXIS 41 (1988).

Precise analysis utilizing each Frazier factor for award of attorney fees is not required, but factors are guidelines for determining reasonableness of attorney fees and not for making threshold determination that fee should be awarded. D.C. Code 1981, § 45-2592. *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

Award pursuant to statute, which permits court to award reasonable attorney fees to prevailing party in action under chapter governing landlord-tenant relationship, is computed by first determining "lodestar," that is, number of hours reasonably expended and multiplied by reasonable hourly rate; lodestar fee is

then adjusted up or down to reflect quality of representation and contingent nature of success. D.C. Code 1981, § 45-2592. *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

Hearing examiners should articulate in specific detail standard employed and facts relied upon in arriving at determination of reasonable attorney fees in rental increase dispute. D.C. Code 1981, § 45-2592; § 45-1526 (repealed). *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

Hearing examiner's statement of reasons and findings justified award of \$5,400 in attorney fees to tenant for challenge to rental increase; examiner indicated that extensive research and investigation were employed, that case was not frivolous gesture, that tenant revealed extensive violations by landlord, and that landlord repeatedly failed to comply with promised presentation of documents, appeared late for hearings, failed to appear, often acted in bad faith, and abused process. D.C. Code 1981, § 45-2592; § 45-1526 (repealed). *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

Tenant was entitled to lodestar fee of \$4,110 to cover attorney fees on appeal from decision of Rental Housing Commission; landlord conceded that hours and hourly rate were reasonable. D.C. Code 1981, § 45-2592. *Ungar v. District of Columbia Rental Housing Com.*, 535 A.2d 887, 1987 D.C. App. LEXIS 513 (1987).

Housing provider.

Prevailing housing provider in action under Rental Housing Act is not entitled to presumptive award of attorney fees. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Attorney fees may be assessed in favor of prevailing housing provider when litigation of tenants is frivolous, unreasonable, or without foundation, or is continued after clearly becoming so, even though tenants do not bring litigation in subjective bad faith. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Prevailing housing provider's request for attorney fees in action under Rental Housing Act may be premised on tenants' individual claims or issues that are frivolous, unreasonable, or groundless. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Three of eight issues raised by tenants in opposition to decision by Rental Housing Commission ordering rent ceiling adjustment for capital improvements were groundless and en-

titled prevailing housing provider to attorney fees of \$1,100; challenge to allocation of cost of improvements was offered without explanation or argumentation, tenants never objected to contractor's failure to produce file pursuant to subpoena to provider, and Commission was not required to deny improvement petitions based on defects in notice to a few tenants not shown to be contesting petitions. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Pro se attorney.

Decision on prior appeal holding that pro se attorney was presumptively entitled to fees as prevailing party under Rental Housing Act was law of the case, despite intervening Supreme Court decision holding that attorney representing himself in federal civil rights action could not be awarded attorney fees under § 1988; prior decision was not rendered clearly erroneous by Supreme Court's decision. 42 U.S.C. § 1988; D.C. Code 1981, § 45-2592. *Lenkin Co. Mgmt. v. District of Columbia Rental Hous. Comm'n*, 677 A.2d 46, 1996 D.C. App. LEXIS 92 (1996).

There is presumption in favor of award of attorney fees to successful attorney pro se tenant in Rental Housing Act disputes, and standard to be used in determining such fee awards are those listed for consideration in determining appropriate award under statutory grant. D.C. Code 1981, § 45-1592 (repealed). *Alexander v. District of Columbia Rental Housing Com.*, 542 A.2d 359, 1988 D.C. App. LEXIS 93 (1988).

Attorney pro se tenant's status as prevailing party in Rental Housing Act dispute was not yet sufficiently determined to warrant award of

attorney fees for his appellate activities. D.C. Code 1981, § 45-1592 (repealed). *Alexander v. District of Columbia Rental Housing Com.*, 542 A.2d 359, 1988 D.C. App. LEXIS 93 (1988).

Tenants.

As result of order of District of Columbia Court of Appeals remanding apartment building owner's capital improvement petition, which sought to increase rent ceiling, for further proceedings, tenants were no longer prevailing parties, entitled to award of attorney fees. *Dorchester House Assocs., Ltd. P'shp v. D.C. Rental Hous. Comm'n*, 913 A.2d 1260, 2006 D.C. App. LEXIS 659 (2006).

Prevailing tenants are entitled to presumptive award of attorney fees in action under Rental Housing Act. D.C. Code 1981, § 45-2592. *Tenants of 500 23rd Street, N.W. v. District of Columbia Rental Housing Com.*, 617 A.2d 486, 1992 D.C. App. LEXIS 320 (1992).

Tenants who prevailed in landlord-initiated proceeding regarding capital improvement petition upon dismissal of case due to landlord's failure to appear, who obtained first impression ruling that landlords had burden of proof, and who obtained relief in form of refund of increased rent, were entitled to attorney fees. D.C. Code 1981, § 45-2592. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Housing Com.*, 573 A.2d 10, 1990 D.C. App. LEXIS 89 (1990).

Presumptive award of attorney fees created by attorney fee provision of Rental Housing Act applies to prevailing tenants in both tenant-initiated and landlord-initiated proceedings. D.C. Code 1981, § 45-2592. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Housing Com.*, 573 A.2d 10, 1990 D.C. App. LEXIS 89 (1990).

§ 42-3509.03. Supersedure.

This chapter shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980.

(July 17, 1985, D.C. Law 6-10, § 903, 32 DCR 3089.)

Cross references. — Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, definitions, see § 42-3501.03.

Prior Codifications. — 1981 Ed., § 45-2593.

Legislative history of Law 6-10. — For

legislative history of D.C. Law 6-10, see Historical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3509.01.

CASE NOTES

In general.

Amnesty provision of Rental Housing Act of 1985 was unavailable to landlord in proceeding which were initiated by petitions filed under 1980 version of Act. D.C. Code 1981, §§ 45-2515(f), 45-2593. *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Provision in Rental Housing Act of 1980 allowing tenants to bring action to enforce Rental Housing Commission decision was clearly applicable to tenants' action to enforce Commission award against landlords and no manifest injustice would result in applying 1980 act, even though when tenants filed petition with rental accommodations office alleging rental overcharges an earlier act allegedly not allowing tenants to enforce decision was in effect, since 1980 act expressly supersedes earlier act, there is no savings clause in 1980 act

providing application of earlier act to pending petitions, and landlords were attempting to resist enforcement of finally adjudicated liability. D.C. Code 1981, §§ 45-1501 to 45-1597, 45-1529. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

No right to commence civil action to enforce decision of Rental Housing Commission under D.C. Code 1981, § 45-1529 accrues and the statute of limitations does not began to run until judicial review rights have been exhausted and, therefore, pending appeal losing party before Commission need not seek stay from agency or from Court of Appeals to prevent finality; however, prevailing party may ask Court of Appeals pursuant to Court of Appeals Rule 19 to require losing party to post bond to protect prevailing party's interests in Commission's decision. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

§ 42-3509.04. Service.

(a) Unless otherwise provided by Rental Housing Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of the documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

(1) By handing the document to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(2) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;

(3) By mail or deposit with the United States Postal Service properly stamped and addressed; or

(4) By any other means that is in conformity with an order of the Rental Housing Commission or the Rent Administrator in any proceeding.

(b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant.

(July 17, 1985, D.C. Law 6-10, § 904, 32 DCR 3089.)

Cross references. — Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, definitions, see § 42-3501.03.

Rent increases above base rent, notice of increase in compliance with this section, see § 42-3502.08.

Section references. — This section is referred to in §§ 42-3502.09 and 42-3502.16.

Prior Codifications. — 1981 Ed., § 45-2594.

Legislative history of Law 6-10. — For legislative history of D.C. Law 6-10, see Histor-

ical and Statutory Notes following § 42-3501.01.

Termination of Law 6-10. — See Historical and Statutory Notes following § 42-3509.01.

CASE NOTES

In general.

More recent statute, which permits service by mail, did not conflict with statute, which requires personal service of notice to tenant to quit and, therefore, did not govern service of notice to quit. D.C. Code 1981, § 45-1406; §§ 45-1561, 45-1595 (repealed). *Graham v. Berstein*, 527 A.2d 736, 1987 D.C. App. LEXIS 376 (1987).

Statute, which requires personal service of notice to tenant to quit, was more specific than statute, which permits service by mail of any information or document and, therefore, governed service of notice to quit. D.C. Code 1981, § 45-1406; §§ 45-1561, 45-1595 (repealed). *Graham v. Berstein*, 527 A.2d 736, 1987 D.C. App. LEXIS 376 (1987).

§ 42-3509.05. [Reserved].

§ 42-3509.06. [Reserved].

§ 42-3509.07. Termination.

All subchapters of this chapter, except subchapters III and V, shall terminate on December 31, 2020.

(July 17, 1985, D.C. Law 6-10, § 907, 32 DCR 3089; Oct. 19, 1989, D.C. Law 8-48, § 2(c), 36 DCR 5788; Sept. 26, 1995, D.C. Law 11-52, § 818, 42 DCR 3684; Oct. 19, 2000, D.C. Law 13-172, § 1202(b), 47 DCR 6308; July 22, 2005, D.C. Law 16-10, § 2, 52 DCR 5244; Mar. 21, 2009, D.C. Law 17-319, § 4(a), 56 DCR 214; Mar. 12, 2011, D.C. Law 18-328, § 2, 58 DCR 16.)

Effect of amendments. — D.C. Law 13-172 amended the termination date.

D.C. Law 16-10 rewrote the section which had read:

“All subchapters of this chapter, except subchapters III and V, shall terminate on December 31, 2005.”

D.C. Law 17-319 substituted “except subchapters III and V and § 42-3509.08” for “except subchapters III and V”.

D.C. Law 18-328 rewrote the section, which formerly read:

“All subchapters of this chapter, except subchapters III and V and § 42-3509.08, shall terminate on December 31, 2010.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(a) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90-day) amendment of section, see § 1202(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1202(b) of the Fiscal Year 2001

Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment, see § 4(a) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) addition, see § 4(b) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 4(a) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

For temporary (90 day) addition, see § 4(b) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

For temporary (90 day) amendment of section, see § 2 of Rental Housing Act Extension Emergency Amendment Act of 2010 (D.C. Act 18-675, December 28, 2010, 58 DCR 132).

For temporary (90 day) amendment of section, see § 2 of Rental Housing Act Extension Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-31, March 15, 2011, 58 DCR 2604).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3504.01.

Legislative history of Law 16-10. — Law 16-10, the “Rental Housing Act Extension Amendment Act of 2005”, was introduced in Council and assigned Bill No. 16-47, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 5, 2005, and May 3, 2005, respectively. Signed by the Mayor on May 18, 2005, it was assigned Act No. 16-74 and transmitted to both Houses of Congress for

its review. D.C. Law 16-10 became effective on July 22, 2005.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

Legislative history of Law 18-328. — Law 18-328, the “Rental Housing Act Extension Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-864, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on December 7, 2010, it was assigned Act No. 18-650 and transmitted to both Houses of Congress for its review. D.C. Law 18-328 became effective on March 12, 2011.

§ 42-3509.08. Inspection of rental housing.

(a) Notwithstanding any other law or rule to the contrary, for the purpose of determining whether any housing accommodation is in compliance with applicable housing rules or construction code rules, the Mayor may enter upon and into any housing accommodation in the District, during all reasonable hours, to inspect the same; provided, that if a tenant of a housing accommodation does not give permission to inspect that portion of the premises under the tenant’s exclusive control, the Mayor shall not enter that portion of the premises unless the Mayor has:

(1) A valid administrative search warrant pursuant to subsection (d) of this section which permits the inspection; or

(2) A reasonable basis to believe that exigent circumstances require immediate entry into that portion of the premises to prevent an imminent danger to the public health or welfare.

(b) Any person who shall hinder, interfere with, or prevent any inspection authorized by this chapter shall, upon conviction thereof, be punished by a fine not exceeding \$100, by imprisonment for a period not exceeding 3 months, or both.

(c) The Mayor may apply to a judge of the District of Columbia for an administrative search warrant to enter any premises to conduct any inspection authorized by subsection (a) of this section.

(d) A judge may issue the warrant if the judge finds that:

(1) The applicant is authorized or required by law to make the inspection;

(2) The applicant has demonstrated that the inspection of the premises is sought as a result of:

(A) Evidence of an existing violation of the housing regulations, codified in Title 14 of the District of Columbia Municipal Regulations, the construction codes, codified in Title 12 of the District of Columbia Municipal Regulations, or other law; or

(B) A general and neutral administrative plan to conduct periodic inspections relating to issuance or renewal of housing business licenses or for conducting fire or life safety inspections;

(3) The owner, tenant, or other individual in charge of the property has

denied access to the property, or, after making a reasonable effort, the applicant has been unable to contact any of these individuals; and

(4) The inspection is sought for health or safety-related purposes.

(July 17, 1985, D.C. Law 6-10, § 908, as added Mar. 21, 2009, D.C. Law 17-319, § 4(b), 56 DCR 214.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(b) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) addition, see § 4(b) of Abatement of Nuisance Properties and Tenant Receivership

Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) addition, see § 4(b) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

CHAPTER 35A. RENTAL HOUSING: TENANT ADVOCACY.

Sec.

- 42-3531.01. Short title.
- 42-3531.02. Purpose.
- 42-3531.03. Findings.
- 42-3531.04. Definitions.
- 42-3531.05. Establishment of Office of the Tenant Advocate.
- 42-3531.06. Chief Tenant Advocate of the Office of the Tenant Advocate.

Sec.

- 42-3531.07. Duties of the Office of the Tenant Advocate.
- 42-3531.08. Establishment, purpose, and membership of the Tenant Advisory Council.
- 42-3531.09. Housing Assistance Fund.
- 42-3531.10. Rulemaking authority.

§ 42-3531.01. Short title.

This chapter may be cited as the “Office of the Chief Tenant Advocate Establishment Act”.

(Oct. 20, 2005, D.C. Law 16-33, § 2061, 52 DCR 7503; Oct. 1, 2007, D.C. Law 16-181, § 2(a), 53 DCR 6703.)

Effect of amendments. — D.C. Law 16-181 deleted “of 2005” following “Act”.

Emergency legislation. — For temporary (90 day) addition, see § 2061 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-181. — Law 16-181, the “Independent Office of the Tenant Advocate Establishment Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-757, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 21, 2006, it was assigned Act No. 16-459 and transmitted to both Houses of Congress for its review. D.C. Law 16-181 became effective on November 16, 2006.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3531.02. Purpose.

The purpose of this chapter is to establish the Office of the Tenant Advocate as an independent agency to advocate on behalf of the education of, and outreach to, tenants and the people of the District.

(Oct. 20, 2005, D.C. Law 16-33, § 2062, 52 DCR 7503; Oct. 1, 2007, D.C. Law 16-181, § 2(b), 53 DCR 6703.)

Effect of amendments. — D.C. Law 16-181 substituted “as an independent agency” for “as an office within the Department of Consumer and Regulatory Affairs”.

Emergency legislation. — For temporary (90 day) addition, see § 2062 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3531.03. Findings.

The Council finds that, despite the fact that the District has some of the most comprehensive pro-tenant laws in the United States:

- (1) Tenants in the District are under-informed of their rights.
- (2) It is difficult for tenants to obtain information.
- (3) Tenants cannot usually afford legal representation.
- (4) Tenants are under-informed about dispute mediation and adjudication options available to tenants in the District through the courts and through the Office of the Attorney General.
- (5) Few tenants have time for self-advocacy because of their full-time employment.
- (6) Tenants in the District need an independent Chief Tenant Advocate to act on their behalf as repository of information and resources to help guide tenants through the landlord-tenant system in the District.
- (7) The establishment of an independent Office of the Tenant Advocate will provide a valuable resource for the government and residents of the District.

(Oct. 20, 2005, D.C. Law 16-33, § 2063, 52 DCR 7503; Oct. 1, 2007, D.C. Law 16-181, § 2(c), 53 DCR 6703.)

Effect of amendments. — D.C. Law 16-181, in par. (6), substituted “independent Chief Tenant Advocate” for “office at the Department of Consumer and Regulatory Affairs”; and, in par. (7), substituted “independent Office of the Tenant Advocate” for “Office of the Tenant Advocate within the Department of Consumer and Regulatory Affairs”.

Emergency legislation. — For temporary (90 day) addition, see § 2063 of Fiscal Year

2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3531.04. Definitions.

For the purposes of this chapter, the term:

- (1) “Chief” means Chief Tenant Advocate established by § 42-3531.06.
- (2) “Office” means the Office of the Tenant Advocate established by § 42-3531.05.
- (3) “TAC” means Tenant Advisory Council.
- (4) “Tenant” and “tenant organization” shall have the same meaning as in § 42-3401.03(17) and (18), and shall include any other tenant organization.

(Oct. 20, 2005, D.C. Law 16-33, § 2064, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2064 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

§ 42-3531.05. Establishment of Office of the Tenant Advocate.

The Office of the Tenant Advocate is established as an independent agency within the District government.

(Oct. 20, 2005, D.C. Law 16-33, § 2065, 52 DCR 7503; Oct. 1, 2007, D.C. Law 16-181, § 2(d), 53 DCR 6703.)

Effect of amendments. — D.C. Law 16-181 substituted “independent agency within the District government” for “office within the Department of Consumer and Regulatory Affairs”.

Emergency legislation. — For temporary (90 day) addition, see § 2065 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

Editor’s notes. — Transfer of functions of Office of the Tenant Advocate of the Department of Consumer and Regulatory Affairs: Section 4 of D.C. Law 16-181 provided: “All positions, property, records, and unexpended balances of appropriations, allocations, assessments, and other funds available or to be made available to the Office of the Tenant Advocate of the Department of Consumer and Regulatory Affairs relating to the duties and functions assigned herein are transferred to the independent Office of the Tenant Advocate.”

§ 42-3531.06. Chief Tenant Advocate of the Office of the Tenant Advocate.

(a) There shall be a Chief Tenant Advocate who shall be responsible for the administration of the Office and implementation of the duties of the Office.

(b)(1) On or after October 1, 2007, the Chief shall be appointed by the Mayor with the advice and consent of the Council for a term of 3 years, unless sooner removed by the Mayor for cause. Any unexpired term as of October 1, 2007 shall expire on that date.

(2) A person appointed to fill a vacancy of this office shall be appointed only for the unexpired term of the Chief whose vacancy is being filled.

(c)(1) The Chief shall be a statutory officeholder in the Excepted Service pursuant to § 1-609.08 and shall receive annual compensation equivalent to that received by a District employee compensated at the grade of 15 of the District schedule established under subchapter XI of Chapter 6 of Title 1 (“District schedule”). No other employee of the Office shall receive annual compensation above the level of that received by a District employee at a grade 14 pursuant to the District schedule.

(2) The Chief shall be a resident of the District of Columbia or become a resident not more than 180 days after the date of appointment, and shall remain a resident.

(d) The Office shall employ the staff necessary, including attorneys, to assist the Chief in carrying out his or her duties.

(Oct. 20, 2005, D.C. Law 16-33, § 2066, 52 DCR 7503; Oct. 1, 2007, D.C. Law 16-181, § 2(e), 53 DCR 6703.)

Effect of amendments. — D.C. Law 16-181 rewrote subsec. (b); in subsec. (c)(2), substituted “and shall remain a resident” for “and shall remain a resident, unless temporarily or permanently exempted from these requirements by the Mayor or for good cause”; and, in subsec. (d), substituted “The Office shall employ the staff necessary, including attorneys,” for “The Office shall employ the staff necessary”. Prior to amendment, subsec. (b) read as follows: “(b) The Chief shall be appointed by the Mayor with the advice and consent of the Council. The Chief shall report directly to the Direc-

tor of the Department of Consumer and Regulatory Affairs.”

Emergency legislation. — For temporary (90 day) addition, see § 2066 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3531.07. Duties of the Office of the Tenant Advocate.

The Office shall:

(1) Provide education and outreach to tenants and the community about laws, rules, and other policy matters involving rental housing, including tenant rights under the petition process and formation of tenant organizations;

(2) Represent the interests of tenants and tenant organizations in legislative, executive, and judicial issues, including advocating changes in laws and rules and reviewing landlord petitions on behalf of tenants;

(3) Advise tenants and tenant organizations on filing complaints and petitions, including petitions in response to disputes with landlords;

(4) Advise and assist tenants and tenant organizations at conciliation meetings;

(5)(A) Represent tenants, at its discretion and as it determines to be in the public interest, in Federal or District judicial or administrative proceedings;

(B) Provide an annual report to the Council on or before February 1 of each year setting forth each tenant request for representation, a description of the circumstances surrounding each request, whether or not the Office provided representation, and the outcome of cases where representation was provided;

(6) Organize tenant and tenant organizations participation in building-wide inspections;

(6A) Provide emergency housing and relocation assistance to qualified tenants, as determined by the Office, including payments for:

(A) The short-term relocation of tenants to hotels, motels, or other appropriate accommodations;

(B) The moving and storage of personal property;

(C) Rental application fees, security deposits, and utility deposits; and

(D) The first month's rent; and

(7) Operate a Tenant Phone Hotline and Tenant Center.

(Oct. 20, 2005, D.C. Law 16-33, § 2067, 52 DCR 7503; Mar. 8, 2007, D.C. Law 16-236, § 3, 54 DCR 391; Oct. 1, 2007, D.C. Law 16-181, § 2(f), 53 DCR 6703; Sept. 14, 2011, D.C. Law 19-21, § 2072, 58 DCR 6226.)

Effect of amendments. — D.C. Law 16-236 rewrote the section.

D.C. Law 16-181, in par. (2), substituted

“interests” for “interest”; rewrote par. (5); in par. (6), deleted “and” from the end; and added par. (6A). Prior to amendment, par. (5) read as

follows: “(5) Represent tenants and tenant organizations in court or administrative proceedings;”

D.C. Law 19-21 rewrote par. (6A), which formerly read:

“(6A) Manage and administer the Housing Assistance Fund established by § 42-3403.07; and”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Temporary Amendment Act of 2006 (D.C. Law 16-183, November 16, 2006, law notification 53 DCR 9650).

Emergency legislation. — For temporary (90 day) addition, see § 2067 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 3 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Emergency Amendment Act of 2006 (D.C. Act 16-408, June 26, 2006, 53 DCR 5428).

For temporary (90 day) amendment of section, see § 3 of Additional Sanctions for Nuisance Abatement and Office of the Tenant Advocate Duties Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-479, September 22, 2006, 53 DCR 7938).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01.

Legislative history of Law 16-236. — For Law 16-236, see notes following § 42-3131.10.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 42-2802.

Short title. — Short title: Section 2071 of D.C. Law 19-21 provided that subtitle H of title II of the act may be cited as “Office of the Tenant Advocate Establishment Amendment Act of 2011”.

Effective date. — Section 5 of D.C. Law 16-181 provided: “Section 2 through 4 shall apply as of October 1, 2007.”

§ 42-3531.08. Establishment, purpose, and membership of the Tenant Advisory Council.

(a) Within 60 days of October 20, 2005, the Mayor shall establish a Tenant Advisory Council to review the progress of the Office in fulfilling its mandate from its inception and to make recommendations for improving the services of the Office.

(b) The TAC shall be composed of tenant organizers, representatives of tenant associations, and other tenant advocates with no connection to commercial real estate interests.

(c) The TAC shall monitor and report on the progress of the Office.

(d) Members of the TAC shall receive no compensation for service as members of the TAC.

(Oct. 20, 2005, D.C. Law 16-33, § 2068, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2068 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 42-3531.01.

§ 42-3531.09. Housing Assistance Fund.

The Housing Assistance Fund established by § 42-3403.07 [repealed] shall be administered and managed by the Office of the Tenant Advocate.

(Oct. 20, 2005, D.C. Law 16-33, § 2068a, as added Oct. 1, 2007, D.C. Law 16-181, § 2(g), 53 DCR 6703.)

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01. 16-181 provided: "Section 2 through 4 shall apply as of October 1, 2007."

Effective date. — Section 5 of D.C. Law

§ 42-3531.10. Rulemaking authority.

On or before December 1, 2007, the Office of the Chief Tenant Advocate shall promulgate rules, subject to Council approval, to implement the provisions of this chapter.

(Oct. 20, 2005, D.C. Law 16-33, § 2068b, as added Oct. 1, 2007, D.C. Law 16-181, § 2(g), 53 DCR 6703.)

Legislative history of Law 16-181. — For Law 16-181, see notes following § 42-3531.01. 16-181 provided: "Section 2 through 4 shall apply as of October 1, 2007."

Effective date. — Section 5 of D.C. Law

CHAPTER 36. RESIDENTIAL DRUG-RELATED EVICTIONS.

Subchapter I. Residential Drug-Related Evictions

Sec.	
42-3601.	Definitions.
42-3602.	Action for possession of rental unit used as a drug haven.
42-3603.	Preliminary injunction review.
42-3604.	Full hearing.
42-3605.	Default judgment.
42-3606.	Complaint by affected tenant or resident association.
42-3607.	Mayor's authority and responsibility.
42-3608.	Court costs and attorney's fees.
42-3609.	Availability of other remedies.
42-3610.	Rules.

Subchapter II. Expired Provisions

Sec.	
42-3631.	Definitions.
42-3632.	Action for possession of rental unit used as a drug haven.
42-3633.	Preliminary injunction review.
42-3634.	Full hearing.
42-3635.	Default judgment.
42-3636.	Complaint by affected tenant or resident association.
42-3637.	Mayor's authority and responsibility.
42-3638.	Court costs and attorney's fees.
42-3639.	Definitions.
42-3640.	Availability of other remedies.

Subchapter I. Residential Drug-Related Evictions.

§ 42-3601. Definitions.

For the purposes of this subchapter, the term:

(1) "Civic association" means:

(A) A nonprofit association, corporation, or other organization that is:

(i) Comprised of residents of a community within which a nuisance is located;

(ii) Operated exclusively for the promotion of social welfare and general neighborhood improvement and enhancement; and

(iii) Exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; or

(B) A nonprofit association, corporation, or other organization that is:

(i) Comprised of residents of a contiguous community that is defined by specific geographic boundaries, within which a nuisance is located; and

(ii) Operated for the promotion of the welfare, improvement, and enhancement of that community.

(2) "Closure" means the closing of a rental unit or housing accommodation.

(3) "Community association" means:

(A) A nonprofit association, corporation, or other organization that is:

(i) Comprised of residents of a community within which a nuisance is located;

(ii) Operated exclusively for the promotion of social welfare and general neighborhood improvement and enhancement; and

(iii) Exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code; or

(B) A nonprofit association, corporation, or other organization that is:

(i) Comprised of residents of a contiguous community that is defined by specific geographic boundaries, within which a nuisance is located; and

(ii) Operated for the promotion of the welfare, improvement, and enhancement of that community.

(4) "Controlled dangerous substance" means any of the controlled dangerous substances as defined in § 48-901.02(4).

(5) "Controlled Substances Act" means the Controlled Substances Act of 1970, approved October 27, 1970 (84 Stat. 1243; 21 U.S.C. § 801 et seq.).

(6) "Court" means the Landlord and Tenant Branch of the Civil Division of the Superior Court.

(7) "District" means the District of Columbia.

(8) "Drug haven" means a housing accommodation, or land appurtenant to or common areas of a housing accommodation where drugs are illegally stored, manufactured, used, or distributed.

(9) "Drug-related eviction" means an eviction pursuant to this subchapter.

(10) "Drug" means a controlled substance as defined in § 33-504(4) [repealed] or the Controlled Substances Act.

(11) "Housing accommodation" means a building that is or contains at least one rental unit and the land appurtenant to the building.

(12) "Housing provider" means:

(A) A landlord, owner, lessor, sublessor, or assignee;

(B) The agent of a landlord, owner, lessor, sublessor, or assignee; or

(C) A person entitled to receive compensation for the use or occupancy of a rental unit within a housing accommodation.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.).

(14) "Manufacture" shall have the same meaning as that term has in § 48-901.02(13) or the Controlled Substances Act.

(15) "Nuisance" means a property that is used:

(A) By persons who assemble for the specific purpose of illegally using a controlled dangerous substance;

(B) For the illegal manufacture or distribution of:

(i) A controlled dangerous substance; or

(ii) Drug paraphernalia, as defined in § 48-1101(3); or

(C) For the illegal storage or concealment of a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense:

(i) A controlled dangerous substance; or

(ii) Drug paraphernalia, as defined in § 48-1101(3).

(16) "Occupant" means a person authorized by the tenant or housing provider to be on the premises of the rental unit.

(17) "Rental unit" means an apartment, room, or part of a publicly or privately owned housing accommodation that is rented or offered for rent for residential occupancy, and the land appurtenant to the apartment, room, or part of the housing accommodation.

(18) "Resident association" means an organization of residents of a multifamily building or a single complex of jointly managed multifamily buildings.

(19) "Tenant" means a lessee, sublessee, or other person entitled to the possession or occupancy of a rental unit.

(20) "Uniform Controlled Substances Act" means Chapter 9 of Title 48.

(Oct. 19, 2000, D.C. Law 13-172, § 1302, 47 DCR 6308; Apr. 27, 2001, D.C. Law 13-281, § 107, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, § 32(b), 49 DCR 8140.)

Effect of amendments. — D.C. Law 13-281 rewrote par. (4) which had read:

“(4) ‘Controlled dangerous substance’ means any of the controlled substances as defined in § 48-902.04(1) and (2).”

D.C. Law 14-213, in par. (4), validated a previously made technical correction.

Emergency legislation. — For temporary (90-day) addition of section, see § 1302 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1302 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law

13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

References in text. — Section 33-504, referred to in par. (10), did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

CASE NOTES

ANALYSIS

Drug haven.
Occupant.

Drug haven.

In order to prevail under Residential Drug-Related Evictions Act (RDEA), landlord was required to establish that tenant’s property currently remained a drug haven or nuisance at the time of the hearing, and in deciding that issue, the court could consider evidence of illegal drug use at and around the rental unit up until the time of trial, evidence of the discontinuance of that use, and the tenant’s explanation of the significant change in circumstances that supported her position that the unit was not a drug haven at the time of the hearing. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

If the factfinder concludes that the cessation of drug activity is a temporary reaction or “cover,” or has been imposed from without, and that the circumstances that led to the existence of the drug haven still remain, then the factfinder may find that the rental unit remains a drug haven at the time of the hearing under Residential Drug-Related Evictions Act (RDEA). *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

With respect to whether there has been a permanent discontinuance of the drug activity prior to the time of the hearing, a recent interruption of such activity as the result of some

external force or influence, such as a police raid, rather than a cessation brought about by the action or circumstances of the tenant, is entitled to relatively little weight in determining whether a drug haven still exists under Residential Drug-Related Evictions Act (RDEA). *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

The use of the present tense in the Residential Drug-Related Evictions Act (RDEA) does not narrow the focus of the controlling inquiry as to whether rental unit is a drug haven to the specific hour or day on which the hearing is held; rather, it refers to the conditions that exist at the “time” of the hearing. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

A rental unit need not be used daily, or even weekly, for the illegal storage, manufacture, use or distribution of illegal drugs to qualify as an existing “drug haven” as of the time of the hearing within meaning of Residential Drug-Related Evictions Act (RDEA). *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Occupant.

“Occupant” under Residential Drug-Related Evictions Act (RDEA) means anyone authorized by tenant or housing provider to be on premises of rental unit. *Ball v. Arthur Winn Gen. P’shp/S. Hills Apts.*, 905 A.2d 147, 2006 D.C. App. LEXIS 423 (2006).

§ 42-3602. Action for possession of rental unit used as a drug haven.

(a) Notwithstanding any provision of § 16-1501, or § 42-3505.01, a housing provider may commence an action in the Court to recover possession of a rental unit or the Mayor may commence an action in the Court to evict a tenant or occupant in a rental unit. The following persons may commence an action to abate a nuisance in the Court: the Mayor, the United States Attorney for the District of Columbia, the civic association within whose boundaries the nuisance is located, or the community association within whose boundaries the nuisance is located. The recovery or eviction shall be ordered if the Court has determined, by a preponderance of the evidence, that the rental unit is a drug haven or that a nuisance exists. In making the determination that the rental unit is a drug haven or that a nuisance exists, the Court shall consider:

(1) Whether a tenant or occupant of the rental unit has been charged with a violation of the Uniform Controlled Substances Act or the Controlled Substances Act due to activities that occurred within the housing accommodation that contains the rental unit, or has violated a term of parole or probation for a previous conviction under the Uniform Controlled Substances Act or the Controlled Substances Act;

(2) Whether the rental unit has been the subject of more than one drug-related search or seizure that has resulted in the arrest of a tenant or occupant;

(3) Whether a firearm has been discharged within the rental unit;

(4) The testimony of a witness concerning the possession, manufacture, storage, distribution, use, or the attempted possession, manufacture, storage, distribution, or use of an illegal drug by a tenant or occupant in the housing accommodation that contains the rental unit;

(5) The general reputation of the property to corroborate testimony based on personal knowledge or observation, or evidence seized during the execution of a search and seizure warrant; provided, that this shall not, in and of itself, be sufficient to establish the existence of a drug haven or nuisance;

(6) Evidence that the drug haven or nuisance had been discontinued at the time of the filing of the complaint or at the time of the hearing, which evidence will not bar the granting of appropriate relief by the Court; or

(7) Any other relevant and admissible evidence that demonstrates that the rental unit is or is not a drug haven or nuisance.

(b) A notice of the action shall be served upon the tenant or occupant and housing provider at least 5 days prior to a hearing.

(Oct. 19, 2000, D.C. Law 13-172, § 1303, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1303 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1303 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

CASE NOTES

ANALYSIS

Admissibility of evidence.

In general.

Notice of action.

Presumptions and burden of proof.

Questions for jury.

Weight and sufficiency of evidence.

Admissibility of evidence.

Permitting landlord, in action under District of Columbia Residential Drug-Related Evictions Act, to present evidence of controlled buys at tenant's apartment by civilian informant without revealing informant's identity was not abuse of discretion; informant did not directly participate in two unchallenged searches of apartment in federally subsidized housing that also produced drug-related evidence including 40 small bags containing cocaine, tenant made only speculative allegations as to informant's possible dishonesty, and police took safeguards to ensure integrity of controlled buys. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Frye test for reliability of evidence involving new technology was inapplicable, in proceeding under Residential Drug-Related Evictions Act, to testimony of experienced investigators that field tests showed substances purchased and seized from apartment to contain cocaine, where investigators testified police department had used cobalt field test for many years and relied on it to obtain search warrants and show probable cause, and case was not a criminal one requiring proof beyond a reasonable doubt, but only required proof by preponderance of evidence that apartment was drug haven. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Allegedly improper cross-examination of tenant's daughter by landlord, in action under District of Columbia Residential Drug-Related Evictions Act, as to whether daughter knew her sister had been arrested several years earlier for drugs, was not prejudicial to tenant, in view of other references to sister's involvement with drugs, including tenant's own testimony that the sister had been "locked up" on a marijuana charge in the past. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Admission of lease agreement, in landlord's eviction action under District of Columbia Residential Drug-Related Evictions Act (RDEA), did not improperly allow landlord to read an additional legal standard into the statute; that evidence merely allowed landlord an opportunity to prove that he enforced prohibitions of RDEA and related laws and that tenant was aware, through the lease, of her responsibility

for actions of family members in her apartment unit in federally subsidized housing. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In general.

Ultimate determination under the Residential Drug-Related Evictions Act (RDEA) is whether the property "is" a drug haven, not whether it "was" a drug haven. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Inclusion, in eviction action in which landlord prevailed on claim under District of Columbia Residential Drug-Related Evictions Act (RDEA), of a criminal activity claim under federal regulation did not confuse jurors or lead them to apply improper standard to RDEA claim; jury instructions included seven factors to be considered with respect to alleged RDEA violation, nine-question special verdict form provided additional separation between RDEA and federal claims, and jurors sent note asking if it was necessary to address federal claim since they had found for landlord on RDEA claim. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Notice of action.

Whether landlord satisfied notice requirement for claim against tenant under federal regulation concerning drug-related activity in federally subsidized housing would not be considered on appeal of order granting judgment of possession to landlord because judgment was properly entered for landlord on claim under District of Columbia Residential Drug-Related Evictions Act (RDEA), for which landlord clearly complied with five-day notice requirement. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Landlord sufficiently informed tenant in federally subsidized housing of basis for alleged violation of District of Columbia Residential Drug-Related Evictions Act (RDEA), where notice to quit stated that tenant, authorized occupants, or invitees were using rental unit as a drug haven in violation of RDEA, further stated that those individuals were engaged in illegal drug activity in or around the property, and mentioned a prior search warrant, the seizure of cocaine from tenant's apartment, and the arrest of tenant's daughter and two other individuals. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Presumptions and burden of proof.

Under Residential Drug-Related Evictions Act (RDEA), even if it appears that drug activities have temporarily ceased in and around a rental unit, the trial court may still, after

considering all of the enumerated statutory factors, determine by a preponderance of the evidence that the property remains a drug haven and find for landlord; however, if the court determines that the cessation of the drug activities should reasonably be deemed permanent and that the property therefore is no longer a drug haven, then the court must find for tenant. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

District of Columbia Residential Drug-Related Evictions Act (RDEA), while requiring that a court consider seven specified factors in determining whether a rental unit is a drug haven, does not mandate that each and every one of the factors must be met, nor how many, before a rental unit in federally subsidized housing may be declared a drug haven. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Questions for jury.

It may be that in contesting the allegation that a rental unit is a drug haven under Residential Drug-Related Evictions Act (RDEA), a tenant will introduce evidence that the use of the rental unit as a drug haven has been discontinued, and such evidence should be scrutinized carefully by the finder of fact, and may be found not to be conclusive with respect to whether the rental unit remained a drug haven as of the time of trial, and factfinder must consider not only whether the unit has been used for illegal drug activity, but also whether it is likely to be used for that purpose in the future. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Whether apartment tenant violated District of Columbia Residential Drug-Related Evictions Act was question for jury in landlord's eviction action, in view of evidence that civilian informant made two controlled purchases of cocaine from tenant's apartment in federally subsidized housing, that searches of apartment yielded 40 black zippered plastic bags containing cocaine and a homemade crack pipe, that management had made frequent complaints to investigators about possible drug dealings in front of tenant's apartment building, and that apartment complex had reputation as drug area. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Weight and sufficiency of evidence.

In order to support eviction under Residential Drug-Related Evictions Act (RDEA), land-

lord was required to establish that tenant's property currently remained drug haven or nuisance at time of hearing. *Ball v. Arthur Winn Gen. P'shp/S. Hills Apts.*, 905 A.2d 147, 2006 D.C. App. LEXIS 423 (2006).

Evidence supported trial court's finding that tenant's apartment was not still a "drug haven" under Residential Drug-Related Evictions Act (RDEA); there was testimony that, following her hospitalization, tenant's daughter had never returned to tenant's apartment, but had lived in a series of nursing homes, tenant's daughter had experienced a heart attack and was brain dead, and tenant's daughter was incapacitated and would never return to tenant's apartment to resume her previous drug activities. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Residential Drug-Related Evictions Act (RDEA) requires trial court to determine whether landlord has established, by preponderance of evidence, that a rental unit is drug haven or that nuisance currently exists there, and in determining whether property is a drug haven or nuisance exists, court must make findings of fact, or jury must reach its verdict, based upon a consideration of all of the categories of evidence enumerated in RDEA, to extent that any are applicable, and court must consider, along with evidence that is admitted within the other categories, evidence of the discontinuance of drug haven or nuisance at time of the filing of complaint or time of hearing. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Residential Drug-Related Evictions Act (RDEA) requires the trial court to consider evidence of discontinuance at the time of the filing of the complaint or the time of the hearing as one factor in the ultimate determination of whether a rental property is a drug haven or nuisance, but some evidence of discontinuance, of itself, will not preclude a finding that the property is a drug haven or nuisance. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

Section of Residential Drug-Related Evictions Act (RDEA) providing that court shall consider, in determining whether a property is a drug haven or a nuisance exists, evidence that the drug haven or nuisance has been discontinued at the time of the filing of the complaint or at the time of the hearing is non-discretionary. *Crescent Props. v. Inabinet*, 897 A.2d 782, 2006 D.C. App. LEXIS 159 (2006).

§ 42-3603. Preliminary injunction review.

(a) After commencement of an action under § 42-3602 and upon request of a party, the Court shall hold a hearing to determine if a preliminary injunction

should be granted to prevent a tenant from directly or indirectly maintaining a drug haven or nuisance.

(b) The Court may grant a motion for a preliminary injunction if the plaintiff meets the necessary legal requirements for a preliminary injunction. The factors that the Court shall consider in determining whether the plaintiff is entitled to a preliminary injunction are:

(1) Whether the plaintiff is likely to prevail on the merits of the case;

(2) Whether, in the absence of relief, the plaintiff will suffer irreparable harm;

(3) Whether there will be substantial harm to the defendant or another party if relief is granted; and

(4) Whether the public interest favors granting relief.

(c) The housing provider and the Mayor shall not be required to give bond to obtain an injunction.

(Oct. 19, 2000, D.C. Law 13-172, § 1304, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1304 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1304 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3604. Full hearing.

(a)(1) Within 10 days of the issuance of the preliminary injunction, excluding Saturdays, Sundays, and legal holidays, the Court shall hold a full hearing on the merits of the eviction action. If a hearing for a preliminary injunction has not been requested, the Court shall expeditiously schedule a full hearing. If it is determined by a preponderance of the evidence, after consideration of the factors set forth in § 42-3602, that the rental unit is a drug haven, the Court shall issue a final order that mandates one or more of the following:

(A) Eviction of the tenant or occupant within 72 hours; or

(B) Closure of the rental unit for a period of time to be decided by the Court.

(2) The Court may order the owner of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a drug haven or nuisance.

(b) Execution of a final order shall occur within 5 days of the issuance of the final order, excluding Saturdays, Sundays, and legal holidays. If the United States Marshal of the District of Columbia has not executed the final order within 5 days of issuance of the final order, the final order shall continue to be executable and valid, in accordance with Rule 16(a) of the Court Rules of Civil Procedure.

(c) The Court shall not enter a final order to evict a tenant or occupant against whom the action was filed if the tenant or occupant shows by a preponderance of the evidence that the events or actions upon which the judgment may be granted:

(1) Could not reasonably have been known to the tenant or occupant;

(2) Were not part of a pattern and practice of the tenant or occupant of the unit; or

(3) Were reported to the Metropolitan Police Department by the tenant or occupant.

(Oct. 19, 2000, D.C. Law 13-172, § 1305, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1305 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1305 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3605. Default judgment.

The Court shall not enter a default judgment to evict a tenant or occupant who has failed to plead or otherwise defend unless, based upon evidence presented by the plaintiff, the Court determines that the rental unit is a drug haven or nuisance.

(Oct. 19, 2000, D.C. Law 13-172, § 1306, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1306 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1306 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3606. Complaint by affected tenant or resident association.

(a) To initiate an action pursuant to § 42-3602, an affected tenant, resident, or resident association may submit a petition accompanied by a complaint for review by the Mayor. The housing provider may be named as party plaintiff in the petition. The review of the petition by the Mayor shall be completed within 7 days of receipt of the petition.

(b) The petition shall set forth the following:

(1) The date and time the affected tenant, resident, or resident association witnessed the possession, manufacture, storage, distribution, use, or attempted possession, manufacture, storage, distribution, or use of an illegal drug in the rental unit by a tenant or occupant;

(2) The name, address, and telephone number of any corroborating witness; and

(3) Any other information relevant to the petition that can be verified by a named witness or independent authority, including the Metropolitan Police Department.

(c) If, upon review, the Mayor determines that a petition and complaint are complete, the affected tenant, resident, or resident association may file the complaint with the Court to commence an action pursuant to § 42-3602.

(d) The Court shall proceed to consider the complaint under §§ 42-3602 and 42-3603.

(Oct. 19, 2000, D.C. Law 13-172, § 1307, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1307 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1307 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3607. Mayor's authority and responsibility.

(a) The Mayor shall establish within the Metropolitan Police Department a division to provide assistance to, supervision of, or protection to a plaintiff who has obtained an eviction order or other relief pursuant to this subchapter.

(b) The Mayor shall report to the Council on an annual basis on the effectiveness of this subchapter.

(Oct. 19, 2000, D.C. Law 13-172, § 1308, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1308 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1308 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 13-172, the Residential Drug-Related Evictions Re-enactment Act of 2000, see Mayor's Order 2006-206, December 30, 2005 53 DCR 2701).

§ 42-3608. Court costs and attorney's fees.

The Court may award court costs and reasonable attorney's fees to a civic association, community association, or resident association that is the prevailing plaintiff in an action brought under this subchapter.

(Oct. 19, 2000, D.C. Law 13-172, § 1309, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1309 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1309 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3609. Availability of other remedies.

The provisions of this subchapter shall not limit the availability of other remedies under law or other equitable relief whether or not an adequate remedy exists at law.

(Oct. 19, 2000, D.C. Law 13-172, § 1310, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1310 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 1310 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

§ 42-3610. Rules.

(a) The Mayor shall issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(b) The Mayor may issue emergency rules without prior Council approval, which shall be effective for not more than 120 days.

(Oct. 19, 2000, D.C. Law 13-172, § 1311, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see § 1311 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1311 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act

of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 42-3601.

Resolutions. — Resolution 16-614, the “Residential Drug-Related Evictions Regulations Approval Resolution of 2006”, was approved effective April 18, 2006.

Subchapter II. Expired Provisions.

§ 42-3631. Definitions.

Expired.

(June 13, 1990, D.C. Law 8-139, § 2, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(a), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Abatement of Controlled Dangerous Substances Nuisance Temporary Amendment Act of 1998 (D.C. Law 12-158, October 7, 1998, law notification 45 DCR 7576).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

For temporary amendment of section, see § 2 of the Abatement of Controlled Dangerous Substances Nuisances Emergency Amendment Act of 1998 (D.C. Act 12-376, June 5, 1998, 45 DCR

4461), § 2 of the Abatement of Controlled Dangerous Substances Nuisances Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-424, July 31, 1998, 45 DCR 5680), and § 2 of the Abatement of Controlled Dangerous Substances Nuisances Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-513, November 18, 1998, 45 DCR 9047).

Legislative history of Law 8-139. — Law 8-139, the “Residential Drug-Related Evictions Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-194, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act

No. 8-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-176. — Law 11-176, the “Abatement of Controlled Dangerous Substances Nuisance Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-070, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by

the Mayor on July 22, 1996, it was assigned Act No. 11-326 and transmitted to both Houses of Congress for its review. D.C. Law 11-176 became effective on April 9, 1997.

Expiration of Law 8-139. — Section 12(b) of D.C. Law 8-139 provided that the act shall expire 10 years after the effective date of the act. D.C. Law 8-139 became effective on June 13, 1990.

§ 42-3632. Action for possession of rental unit used as a drug haven.

Expired.

(June 13, 1990, D.C. Law 8-139, § 3, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(b), 43 DCR 4234; June 3, 1997, D.C. Law 11-274, § 19(a), 44 DCR 1232.)

Prior Codifications. — 1981 Ed., § 45-2559.2.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see Historical and Statutory Notes following § 42-3631.

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

Legislative history of Law 11-274. — Law 11-274, the “Sex Offender Registration Act of 1996,” was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3633. Preliminary injunction review.

Expired.

(June 13, 1990, D.C. Law 8-139, § 4, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(c), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.3.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3634. Full hearing.

Expired.

(June 13, 1990, D.C. Law 8-139, § 5, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(d), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.4.

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3635. Default judgment.

Expired.

(June 13, 1990, D.C. Law 8-139, § 6, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(e), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.5.

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3636. Complaint by affected tenant or resident association.

Expired.

(June 13, 1990, D.C. Law 8-139, § 7, 37 DCR 2645.)

Prior Codifications. — 1981 Ed., § 45-2559.6.

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3637. Mayor's authority and responsibility.

Expired.

(June 13, 1990, D.C. Law 8-139, § 8, 37 DCR 2645.)

Prior Codifications. — 1981 Ed., § 45-2559.7.

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3638. Court costs and attorney's fees.

Expired.

(June 13, 1990, D.C. Law 8-139, § 8a; Apr. 9, 1997, D.C. Law 11-176, § 2(f), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.7a.

Emergency legislation. — For temporary addition of section, see § 2(f) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

§ 42-3639. Definitions.

Expired.

(June 13, 1990, D.C. Law 8-139, § 9, 37 DCR 2645.)

Prior Codifications. — 1981 Ed., § 45-2559.8.

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

§ 42-3640. Availability of other remedies.

Expired.

(June 13, 1990, D.C. Law 8-139, § 10, 37 DCR 2645; Apr. 9, 1997, D.C. Law 11-176, § 2(g), 43 DCR 4234.)

Prior Codifications. — 1981 Ed., § 45-2559.9.

Emergency legislation. — For temporary amendment of section, see § 2(g) of the Drug House Abatement Emergency Amendment Act of 1996 (D.C. Act 11-446, December 5, 1996, 43 DCR 6664).

Legislative history of Law 8-139. — For legislative history of D.C. Law 8-139, see His-

torical and Statutory Notes following § 42-3631.

Legislative history of Law 11-176. — For legislative history of D.C. Law 11-176, see Historical and Statutory Notes following § 42-3631.

Expiration of Law 8-139. — See Historical and Statutory Notes following § 42-3631.

CHAPTER 36A. TENANT RECEIVERSHIP.

Sec.	Sec.
42-3651.01. Purpose of the appointment of a receiver.	42-3651.05. Appointment of a receiver; continuation of ex parte appointment.
42-3651.02. Grounds for appointment of a receiver.	42-3651.06. Powers and duties of a receiver.
42-3651.03. Petition for receivership.	42-3651.07. Termination of receivership.
42-3651.04. Notice and hearing requirements.	42-3651.08. Final Accounting.

§ 42-3651.01. Purpose of the appointment of a receiver.

The purpose of the appointment of a receiver under this chapter shall be to safeguard the health, safety, and security of the tenants of a rental housing accommodation if there exists a violation of District of Columbia or federal law which seriously threatens the tenant's health, safety, or security. The receiver shall not take actions inconsistent with this purpose or take actions other than those necessary and proper to the maintenance and repair of the rental housing accommodation. Nothing in this chapter shall be construed to limit or abrogate any other common law or statutory right to petition for receivership.

(Apr. 27, 2001, D.C. Law 13-281, § 501, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Delegation of Authority. — Delegation of Authority Under D.C. Law 13-281, the "Abatement and Condemnation of Nuisance Property Omnibus Amendment Act of 2002", see Mayor's Order 2002-33, March 1, 2002 (49 DCR 1875).

Editor's notes. — Section 601 of D.C. Law 13-281 provided: "The Mayor may issue rules to implement the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 in accordance with the District of Columbia Administrative Procedure Act."

CASE NOTES

In general.

Tenant Receivership Act was not intended to punish owners or others who caused housing violations, but rather to remedy violations to protect the tenants, and thus defendants' criminal prosecution for housing violations, while state also initiated civil proceedings to gain receivership of defendants' apartment complex under act, did not implicate double jeopardy

concerns, where stated purpose of act was to "safeguard the health, safety, and security of tenants," burden of proof under act was preponderance of the evidence, and receivership was not a punishment and was not intended for retribution or deterrence purposes. *John v. District of Columbia*, 813 A.2d 178, 2002 D.C. App. LEXIS 722 (2002).

§ 42-3651.02. Grounds for appointment of a receiver.

(a)(1) A receiver may be appointed if a rental housing accommodation has been cited by the Department of Consumer and Regulatory Affairs for a violation of chapters 1 through 16 of Title 14 of the District of Columbia Municipal Regulations or Title 12 of the District of Columbia Municipal Regulations, or its equivalent, which violation poses a serious threat to the health, safety, or security of the tenants; and

(2) The owner, agent, lessor, or manager has been properly notified of the violation but has failed timely to abate the violations; provided, that proper notification shall be deemed to have been effected if a copy of the notice has been served pursuant to applicable law or rule, or as follows:

(A) By personal service on the property owner, lessor, or manager or the agent thereof;

(B) By delivering the notice to the last known home or business address of the property owner, lessor, manager, or agent as identified by the tax records, business license records, or business entity registration records, and leaving it with a person over 16 years of age residing or employed therein;

(C) By mailing the notice, via first-class mail postage prepaid, to the last known home or business address of the property owner, lessor, manager, or agent as identified by the tax records, business license records, or business entity registration records; or

(D) If the notice is returned as undeliverable by the post office authorities, or if no address is known or can be ascertained from the District's tax, business license, or business entity registration records, by posting a copy of the notice in a conspicuous place in or about the structure affected by such notice.

(b) A receiver may also be appointed if a rental housing accommodation has been operated in a manner that demonstrates a pattern of neglect for the property for a period of 30 consecutive days and such neglect poses a serious threat to the health, safety, or security of the tenants. For purposes of this subsection, the term "pattern of neglect" includes all evidence that the owner, agent, lessor, or manager of the rental housing accommodation has maintained the premises in a serious state of disrepair, including vermin or rat infestation, filth or contamination, inadequate ventilation, illumination, sanitary, heating or life safety facilities, inoperative fire suppression or warning equipment, or any other condition that constitutes a hazard to its occupants or to the public.

(Apr. 27, 2001, D.C. Law 13-281, § 502, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, § 32(c), 49 DCR 8140; Mar. 21, 2009, D.C. Law 17-319, § 5(a), 56 DCR 214.)

Effect of amendments. — D.C. Law 14-213, in par. (1), validated a previously made technical correction.

D.C. Law 17-319 rewrote the section.

Temporary Amendment of Section. — Section 5(a) of D.C. Law 17-237 amended this section to read as follows:

"Sec. 502. Grounds for appointment of a receiver.

"(a)(1) A receiver may be appointed if a rental housing accommodation has been cited by the Department of Consumer and Regulatory Affairs for a violation of chapters 1 through 16 of Title 14 of the District of Columbia Municipal Regulations or Title 12 of the District of Columbia Municipal Regulations, or its equivalent, which violation poses a serious threat to the health, safety, or security of the tenants; and

"(2) The owner, agent, lessor, or manager has been properly notified of the violation but has failed timely to abate the violations; provided, that proper notification shall be deemed to have been effected if a copy of the notice has been

served pursuant to applicable law or rule, or as follows:

"(A) By personal service on the property owner, lessor, or manager or the agent thereof; or

"(B) By delivering the notice to the last known home or business address of the property owner, lessor, manager, or agent as identified by the tax records, business license records, or business entity registration records, and leaving it with a person over 16 years of age residing or employed therein; or

"(C) By mailing the notice, via first-class mail postage prepaid, to the last known home or business address of the property owner, lessor, manager, or agent as identified by the tax records, business license records, or business entity registration records; or

"(D) If the notice is returned as undeliverable by the post office authorities, or if no address is known or can be ascertained from the District's tax, business license, or business entity registration records, by posting a copy of the notice

in a conspicuous place in or about the structure affected by the notice.

“(b) A receiver may also be appointed if a rental housing accommodation has been operated in a manner that demonstrates a pattern of neglect for the property for a period of 30 consecutive days and such neglect poses a serious threat to the health, safety, or security of the tenants. For the purposes of this subsection, the term “pattern of neglect” includes all evidence that the owner, agent, lessor, or manager of the rental housing accommodation has maintained the premises in a serious state of disrepair including, vermin or rat infestation, filth or contamination, inadequate ventilation, illumination, sanitary, heating or life safety facilities, inoperative fire suppression or warning equipment, or any other condition that constitutes a hazard to its occupants or to the public.”.

Section 8(b) of D.C. Law 17-237 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment, see § 5(a) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 5(a) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

§ 42-3651.03. Petition for receivership.

(a) Notwithstanding the availability of any other remedy, the Corporation Counsel may, in the name of the District of Columbia and based on the grounds set forth in § 42-3651.02, petition the Superior Court of the District of Columbia (“Court”) to appoint a receiver of the rents or payments for use and occupancy for the affected rental housing accommodation.

(b) Notwithstanding the availability of any other remedy, a majority of the tenants in the rental housing accommodation may, based on the grounds set forth in § 42-3651.02, submit a written request asking the Corporation Counsel to petition the Court to appoint a receiver of the rents or payments for use and occupancy of the affected rental housing accommodation. If the Corporation Counsel denies the request or does not file a petition within 5 days, excluding Saturdays, Sundays, and legal holidays, after receiving a request, the requestor may file with the Court a petition for the appointment of a receiver.

(c) Except as provided in § 42-3651.04(b), the Court shall set a date for a hearing on the petition no later than 30 days after the filing of the petition.

(Apr. 27, 2001, D.C. Law 13-281, § 503, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3651.04. Notice and hearing requirements.

(a)(1) After a petition has been filed under § 42-3651.03, the Chief Judge of the Superior Court, or the Judge’s designee, shall immediately issue an order requiring the owner, agent, lessor, or manager, as respondent, to show cause why a receiver should not be appointed. The order shall include a notice that the Court will consider, in addition to the grounds for receivership set forth in § 42-3651.02, a plan submitted by the respondent to abate the conditions alleged in the petition.

(2) The order of the Court, along with the notice and a copy of the petition, shall be served on the owner of record, and the agent, lessor, or manager, at his or her last known address or by such other method as the Court may direct and shall be posted in a conspicuous place upon the rental housing accommodation.

(3)(A) If the petition is not filed by the Office of the Corporation Counsel, the order of the Court, along with a copy of the petition, shall be served on the Corporation Counsel.

(B) No later than 5 days, excluding Saturdays, Sundays, and legal holidays, after receiving a copy of the petition under subparagraph (A) of this paragraph, the Department of Consumer and Regulatory Affairs shall make available to the petitioner for its use in the proceedings certified copies of all licensure and housing inspection reports in the custody of the District government that document conditions in the rental housing accommodation within the previous 3 years.

(b)(1) If, upon filing of a petition, the Court finds probable cause to believe a condition or practice in the affected rental housing accommodation poses an immediate danger to the health, safety, or security of the tenants, it may, ex parte, issue an order of not more than 14 days duration appointing a receiver and direct that the order be served along with the notice required by this section; provided, that a hearing be commenced before the expiration of the order.

(2)(A) In the event of an ex parte appointment under paragraph (1) of this subsection, the petitioner shall ensure that the owner, agent, lessor, or manager of the rental housing accommodation is served with notice and a copy of the petition, any supporting affidavits, and the order of appointment:

(i) By personal service within 72 hours after the appointment; or

(ii) By notice conspicuously posted inside or on the front door of the rental housing accommodation within 96 hours of the appointment, if the petitioner files with the Court a sworn statement setting forth in detail his diligent effort to serve notice under sub-subparagraph (i) of this subparagraph.

(B) In addition, the petitioner shall serve the order of the Court, along with a copy of the petition, on the owner of record at his or her last known address and his or her agent, lessor, or manager at his or her last known address.

(c) A receiver appointed under subsection (b) of this section may immediately collect all rents or payments for use and occupancy of the affected rental housing accommodation and alleviate the conditions cited by the Court in the order appointing the receiver.

(Apr. 27, 2001, D.C. Law 13-281, § 504, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3651.05. Appointment of a receiver; continuation of ex parte appointment.

(a)(1) After a hearing, the Court may appoint a receiver for a rental housing accommodation or continue the appointment of a receiver made ex parte if it

finds that the petitioner has proven, by a preponderance of the evidence, the existence of the grounds for receivership as set forth in § 42-3651.02 and finds that the respondent has not provided the Court with a sufficient plan for abatement of the conditions alleged in the petition.

(2) Upon acceptance of a respondent's plan, the Court may dismiss the petition or retain the case for purposes of monitoring respondent's execution of the plan. The monitoring shall continue until the Court, on its own motion or that of any party:

(A) Dismisses the petition on grounds that the respondent has completed the plan; or

(B) Finds the respondent has not made sufficient progress to complete the plan, in which event it may order appointment of a receiver under this section.

(b) Except as provided in subsection (c) of this section, the Court may appoint as a receiver any person or entity who has demonstrated to the Court the capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the rental housing accommodation

(c) The Court shall not appoint as a receiver:

(1) An employee of a District of Columbia government agency that licenses or provides a financial payment to the type of housing accommodation being placed in receivership;

(2) A person who has a financial interest in any other real property in common with the owner of the property being placed under receivership; or

(3) A parent, child, grandchild, spouse, or domestic partner as defined in § 32-701(3), sibling, first cousin, aunt, or uncle of the owner of the property being placed under receivership or a tenant of the property being placed under receivership, whether the relationship arises by blood, marriage, or adoption.

(d)(1) Before a receiver takes charge of a rental housing accommodation, the receiver shall post a bond, the premiums of which may be paid in installments, with the Court, which bond:

(A) Does not exceed the value of the rental housing accommodation and its furnishings, records, and other related personal property and goods; and

(B) Is held by the Court for the benefit of all persons interested in the faithful performance of the receivership.

(2) Unless the Court directs otherwise, the receiver may pay the premium of the bond from the rental housing accommodation's income.

(3) The bond requirement of this subsection may be waived by the Court for good cause.

(e) Any person authorized to file a petition under § 42-3651.03 may petition the Court to appoint a substitute if a receiver:

(1) Dies;

(2) Has or develops a disability which impedes his or her ability to carry out the receivership;

(3) Has or develops a conflict of interest; or

(4) Fails to make reasonable progress in carrying out the receivership.

(f) As part of any order appointing a receiver, or in any plan for abatement presented by a respondent, the Court may, in appropriate circumstances, order

that the respondent contribute funds in excess of the rents collected from the rental housing accommodation for the purposes of abating housing code violations and assuring that any conditions that are a serious threat to the health, safety, or security of the occupants or public are corrected.

(Apr. 27, 2001, D.C. Law 13-281, § 505, 48 DCR 1888; Sept. 8, 2004, D.C. Law 15-176, § 4, 51 DCR 5707; Mar. 21, 2009, D.C. Law 17-319, § 5(b), 56 DCR 214.)

Effect of amendments. — D.C. Law 15-176, in par. (3) of subsec. (c), substituted “spouse, or domestic partner as defined in § 32-701(3),” for “spouse”.

D.C. Law 17-319 added subsec. (f).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5(b) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) amendment, see § 5(b) of Abatement of Nuisance Properties and Tenant Receivership Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 5(b) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 15-176. — For Law 15-176, see notes following § 42-1102.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

Editor’s notes. — Applicability of D.C. Law 15-176: Section 7 of D.C. Law 15-176 provided: “Sections 2 through 6 shall apply as of October 1, 2003.”

§ 42-3651.06. Powers and duties of a receiver.

(a) A receiver shall:

(1) Take charge of the operation and management of the rental housing accommodation and assume all rights to possess and use the building, fixtures, furnishings, records, and other related property and goods that the owner or property manager would have if the receiver had not been appointed; and

(2) Give notice of the receivership, in accordance with subsection (b) of this section, to the rental housing accommodation’s tenants and employees, all public utility providers whom the owner was responsible for paying before the appointment of the receiver, any mortgage company holding a lien against the property, and any other person whom the Court orders should receive notice;

(3) Have the power to collect all rents and payments for use and occupancy;

(4)(A) Provide the Court, within 30 days following the issuance of the order of appointment, with a plan for the rehabilitation of the rental housing accommodation, including the projected dates when all causes giving rise to the appointment will be abated and a financial forecast indicating how the rehabilitation will be paid for;

(B) Serve a copy of the plan upon the owner of record, the Corporation Counsel, and the tenants of the rental housing accommodation, or their representative;

(5)(A) Report to the Court every 6 months after the filing of the report required under paragraph (4) of this subsection, describing the progress made in abating the conditions giving rise to the appointment, updating the financial forecast for the rehabilitation, and describing any changes in the condition of

the rental housing accommodation that may change the proposed completion dates submitted under paragraph (4) of this subsection;

(B) Serve a copy of the report upon the owner of record, the Corporation Counsel, and the tenants of the rental housing accommodation, or their representative;

(6) Preserve all property and records with which the receiver has been entrusted;

(7) Assume all rights of the owner to enforce or avoid terms of a lease, mortgage, secured transactions, and other contracts related to the rental housing accommodation and its operation; and

(8) Carry out any other duties established by the Court.

(b) The notice required by subsection (a)(2) of this section shall include, at a minimum, the following information in not less than 12-point type in both English and Spanish:

(1) The reasons for the receivership;

(2) The identity of the receiver, his or her address and telephone number;

(3) The receiver's responsibilities and duties;

(4) The anticipated duration of the receivership; and

(5) That no tenant is required to move as a result of the receivership.

(c) The receiver shall, under the plan described in subsection (a)(4) of this section, make payments in accordance with the following priorities:

(1) As a first priority, using monthly rental income, to abate housing code violations if abatement is required within 7 days of service of notice, and, after abatement of the conditions, to abate housing code violations if abatement is required within 30 days of service of notice; and

(2) As a second priority, for other purposes reasonably necessary in the ordinary course of business of the property, including maintenance and upkeep of the rental housing accommodation, payment of utility bills, mortgages and other debts, and payment of the receiver's fee.

(d) The receiver shall not make capital improvements to the property except those necessary to abate housing code violations.

(e) The receiver shall not enter into contracts which affect the ownership of the property.

(f) The receiver shall be personally liable only for his or her acts of gross negligence or intentional wrongdoing in carrying out the receivership.

(g) A receiver shall be entitled to a reasonable fee established by the Court and payable from the revenues of the rental housing accommodation.

(h) The receiver may apply for grants and subsidies for the relief of distressed properties to the same extent as the owner of the rental housing accommodation.

(i) The owner, agent, manager, or lessor shall be enjoined from collecting rents and payments for use and occupancy for the duration of the receivership.

(Apr. 27, 2001, D.C. Law 13-281, § 506, 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, § 32(d), 49 DCR 8140; Mar. 21, 2009, D.C. Law 17-319, § 5(c), 56 DCR 214.)

Effect of amendments. — D.C. Law 14-213, in subsec. (c), validated a previously made technical correction.

D.C. Law 17-319, in subsec. (c)(1), deleted “no more than half of” following “using”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5(c) of Abatement of Nuisance Properties and Tenant Receivership Temporary amendment Act of 2008 (D.C. Law 17-237, October 21, 2008, law notification 55 DCR 11700).

Emergency legislation. — For temporary (90 day) amendment, see § 5(c) of Abatement of Nuisance Properties and Tenant Receivership

Emergency Amendment Act of 2008 (D.C. Act 17-420, July 8, 2008, 55 DCR 7703).

For temporary (90 day) amendment of section, see § 5(c) of Abatement of Nuisance Properties and Tenant Receivership Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-563, October 27, 2008, 55 DCR 12019).

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 42-1102.

Legislative history of Law 17-319. — For Law 17-319, see notes following § 42-3131.01.

§ 42-3651.07. Termination of receivership.

(a) Except as provided in subsection (b) of this section, a receivership shall terminate when:

(1) The Court determines that the receivership is no longer necessary because the grounds on which the appointment of the receiver was based no longer exist, that the receiver has received proper compensation for the services provided, and that the District of Columbia has been reimbursed for all expenses related to the appointment of the receiver; or

(2) The Court determines on recommendation from the receiver that the violations giving rise to the appointment of the receiver cannot be abated and serves a copy of the order within 10 days on the Director of the Department of Consumer and Regulatory Affairs.

(b)(1) Notwithstanding subsection (a) of this section, a receivership of a rental housing accommodation shall not be terminated in favor of any person who was the owner of the rental housing accommodation or his representative at the time the petition was filed under § 42-3651.03, or, in the discretion of the Court, any person who is or was an affiliate of the owner, agent, lessor, or manager, unless he or she first reimburses the District of Columbia for the expenses incurred in creating the receivership.

(2) The Court may in addition require that, before a person specified in paragraph (1) of this subsection resumes control of a rental housing accommodation, he or she post bond in an amount the Court deems appropriate as security against noncompliance with the law. If the receivership is not reinstated under subsection (c) of this section, the bond money shall be returned with all applicable interest.

(c) Should it appear that, within 2 years after a receivership is terminated in favor of a person specified in subsection (b) (1) of this section, that person is not maintaining the affected rental housing accommodation in substantial compliance with all applicable laws, and should the Court so find after granting notice and a hearing to all parties to the earlier receivership proceeding, the previous order appointing a receiver may be reinstated. A receiver thus reappointed may use all or part of any bond posted pursuant to subsection (b) (2) of this section to remedy the deficiencies.

(Apr. 27, 2001, D.C. Law 13-281, § 507, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

§ 42-3651.08. Final Accounting.

Within 30 calendar days after termination of a receivership, the receiver shall give the Court a complete accounting of all property with which he or she has been entrusted, all funds collected, and all expenses incurred.

(Apr. 27, 2001, D.C. Law 13-281, § 508, 48 DCR 1888.)

Legislative history of Law 13-281. — For Law 13-281, see notes following § 42-3131.05.

SUBTITLE VII-A. PERSONAL PROPERTY.

CHAPTER 36B. LEASE-PURCHASE AGREEMENTS.

Sec.	Sec.
42-3671.01. Definitions.	42-3671.08. Receipts and accounts.
42-3671.02. Consumer rights.	42-3671.09. Renegotiations and extension.
42-3671.03. General requirements of disclosures.	42-3671.10. Advertising.
42-3671.04. Disclosures.	42-3671.11. Price cards.
42-3671.05. Maintenance of the property.	42-3671.12. Civil remedies for consumers.
42-3671.06. Prohibited practices.	42-3671.13. Limitation of actions.
42-3671.07. Reinstatement.	42-3671.14. Effect of unintentional violation and timely adjustment of error.

§ 42-3671.01. Definitions.

For the purposes of this chapter, the term:

(1) “Advertisement” means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement. The term “advertisement” shall not include in-store merchandising aids or window signs.

(2) “Cash price” means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) “Consumer” means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family, or household purposes.

(4) “Consummation” means the time a consumer becomes contractually obligated on a lease-purchase agreement.

(5) “Department” means the Department of Consumer and Regulatory Affairs.

(6) “Lessor” means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

(7)(A) “Lease-purchase agreement” mean an agreement for the use of personal property:

(i) By a natural person primarily for personal, family, or household purposes;

(ii) For an initial period of 4 months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period; and

(iii) That permits the consumer to become the owner of the property.

(B) A lease-purchase agreement shall not mean:

(i) A consumer transaction under Chapter 38 of Title 28 of the District of Columbia Official Code or Chapter 100 of Title 16 of the District of Columbia Municipal Regulations (16 DCRM § 100 et seq.);

(ii) A security interest as defined in Chapter 38 of Title 28;

(iii) A loan, an instrument in writing for the payment of money at a future time, or interest under Chapter 38 of Title 28;

(iv) A lease-purchase agreement primarily for business, commercial,

agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(v) A lease of a safe deposit box;

(vi) A lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property;

(vii) A lease of an automobile; or

(viii) A lease or purchase of real property.

(Apr. 13, 2002, D.C. Law 14-99, § 2, 49 DCR 1000.)

Legislative history of Law 14-99. — Law 14-99, the “Lease-Purchase Agreement Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-123, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on

first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on January 28, 2002, it was assigned Act No. 14-232 and transmitted to both Houses of Congress for its review. D.C. Law 14-99 became effective on April 13, 2002.

§ 42-3671.02. Consumer rights.

(a) At consummation, the consumer shall have the right to choose, if the property is lost, stolen, damaged, or destroyed, whether to be responsible for either a stipulated valuation agreed to at the time the contract is entered into or the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed.

(b) At consummation, the consumer shall be provided an option to purchase the property in accordance with the disclosure required under § 42-3671.04. The option shall include the consumer’s right to exercise an early purchase option and the price, formula, or method for determining the price at which the property may be so purchased.

(c) At consummation, the consumer shall be provided a statement that the lessor is responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer’s express warranty covers the leased property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty.

(d) At consummation, the consumer shall be provided a statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term.

(Apr. 13, 2002, D.C. Law 14-99, § 3, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.03. General requirements of disclosures.

(a) The lessor shall disclose to the consumer the information required by

§ 42-3671.04. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures.

(b) The disclosures shall be made at or before consummation.

(c) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement shall be provided to the consumer. The disclosures required under § 42-3671.04 shall be made on the face of the contract above the line for the consumer's signature.

(d) If a disclosure becomes inaccurate as the result of an action, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter.

(e) The lease-purchase agreement shall include a statement indicating all fees that are charged under the lease-purchase agreement separately, including any other charges such as taxes, late payment fees, default fees, processing fees, pickup fees, fees for optional services or products, or reinstatement fees.

(Apr. 13, 2002, D.C. Law 14-99, § 4, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.04. Disclosures.

(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(2) A statement that the consumer will not own the property until the consumer has made the total payment required to purchase under the lease-purchase agreement;

(3) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

(4) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used; provided, that a statement that indicates new property is used shall not be a violation of this chapter;

(5) A brief description of any damages to the leased property;

(6) The cash price of the property; provided, that if the lease-purchase agreement involves a lease of items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(7) The total of initial payments paid or required at or before consummation or delivery of the property, whichever is later;

(8) A statement that the total of lease payments does not include other charges, such as taxes, late payment fees, default fees, processing fees, pickup fees, fees for optional services or products, or reinstatement fees, which fees shall be separately disclosed in the contract;

(9) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an

early purchase option and the price, formula, or method for determining the price at which the property may be so purchased;

(10) A statement that the lessor is responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(11) The date of the transaction and the identities of the lessor and consumer;

(12) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term; and

(13) Notice of the right to reinstate a lease-purchase agreement as provided in § 42-3671.07.

(b) With respect to matters specifically governed by the Consumer Credit Protection Act, approved May 29, 1968 (88 Stat. 1511; 15 U.S.C. § 1601 et seq.), compliance with that Act shall satisfy the requirements of this section.

(Apr. 13, 2002, D.C. Law 14-99, § 5, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.05. Maintenance of the property.

During the rental term, the lessor shall maintain the property in good working condition, including repairing or replacing, if repair cannot be completed within a reasonable time, any property which fails to perform as a result of a defect in the property not caused by harmful conditions outside the merchant's or manufacturer's control or by improper use by the consumer, as long as no other person has been permitted to repair it. The merchant may, but shall not be required, to repair or replace property which has been damaged by the negligent or intentional act of the consumer.

(Apr. 13, 2002, D.C. Law 14-99, § 6, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.06. Prohibited practices.

A lease-purchase agreement shall not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor under the lease-purchase agreement;
- (4) A wage assignment;

(5) A waiver by the consumer of claims or defenses; or

(6) A provision authorizing the lessor, or the lessor's agent, to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

(Apr. 13, 2002, D.C. Law 14-99, § 7, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.07. Reinstatement.

(a) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of:

(1) All current and past due rental charges;

(2) If the property has been picked up, the reasonable costs of pickup and redelivery; and

(3) Any applicable late fee, within 5 days of the renewal date if the consumer pays monthly, or within 2 days of the renewal date if the consumer pays more frequently than monthly.

(b) In the case of a consumer who has paid less than $\frac{2}{3}$ of the total payments required to purchase under the lease-purchase agreement and who has returned, or voluntarily surrendered, the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of property.

(c) In the case of a consumer who has paid at least $\frac{2}{3}$ of the total of payments and has returned, or voluntarily surrendered, the property, other than through judicial process, during the applicable period set forth in subsection (a) of this section, the consumer may reinstate the agreement during a period of not less than 45 days after the date of the return of the property.

(d) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

(Apr. 13, 2002, D.C. Law 14-99, § 8, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.08. Receipts and accounts.

A lessor shall provide to the consumer a written receipt for each payment made by cash or money order.

(Apr. 13, 2002, D.C. Law 14-99, § 9, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.09. Renegotiations and extension.

(a) Renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures; provided, that renegotiation shall not include events of the following nature:

(1) The addition or return of property in a multiple-item agreement or the substitution of the lease property if the average payment allocable to the payment period is not changed by more than 25%;

(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the lease or agreement; or

(4) A lease agreement involved in a court proceeding.

(b) No disclosures shall be required for an extension of a lease-purchase agreement.

(Apr. 13, 2002, D.C. Law 14-99, § 10, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.10. Advertising.

(a) If an advertisement for a lease-purchase agreement refers to, or states, the amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

(1) That the transaction advertised is a lease-purchase agreement;

(2) The total of payments necessary to acquire ownership; and

(3) That the consumer acquires no ownership rights if the total amount required to purchase is not paid.

(b) An owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(c) Subsection (a) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment or which is published in the yellow pages of a telephone directory or in any similar directory of business.

(Apr. 13, 2002, D.C. Law 14-99, § 11, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.11. Price cards. .

(a) Each item displayed or offered under a lease-purchase agreement shall bear a tag or card that indicates:

- (1) The cash price of the item;
- (2) The amount of the periodic payment;
- (3) The total number and total amount of periodic payments necessary to acquire ownership; and
- (4) Whether the item is new or previously rented.

(b) Notwithstanding the provisions of this section, a lessor may make the required disclosures in the form of a list or catalog which is readily available to a consumer if displaying a tag would be impractical due to the size of the merchandise. In addition, a lessor may make the required disclosures in the form of a list or catalog if the merchandise displayed can be purchased in a credit transaction or if the merchandise displayed represents only a sample of the merchandise available under a lease-purchase agreement.

(Apr. 13, 2002, D.C. Law 14-99, § 12, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.12. Civil remedies for consumers.

(a) A lessor who fails to comply with a requirement imposed by this chapter with respect to a consumer shall be liable to the consumer in an amount equal to the greater of:

- (1) The actual damages sustained by the consumer as a result of the violation, plus the costs of the action and reasonable attorneys' fees;
- (2) In the case of an individual action, 25% of the total of payments necessary to acquire ownership but not less than \$100 nor greater than \$1,000, plus the costs of the action and reasonable attorneys' fees; or
- (3) In the case of a class action, the amount that the court determines to be appropriate with no minimum recovery as to each member, plus the costs of the action and reasonable attorneys' fees. The total recovery in any class action or series of class actions arising out of the same violation shall not be more than the lesser of \$500,000, plus the costs of the action and reasonable attorneys' fees, or 1% of the net worth of the lessor, plus the costs of the action and reasonable attorneys' fees. In determining the amount of an award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional.

(b) In the case of an advertisement, a lessor who fails to comply with the requirements of § 42-3671.10 shall be liable to a person for actual damages suffered from the violation, the costs of the action, and reasonable attorneys' fees.

(c) If there are multiple lessors, liability shall be imposed only on the lessor

who made the disclosures. If no disclosures have been given, liability shall be imposed on all lessors.

(d) If there are multiple consumers in a rental-purchase agreement, there shall be only one recovery of damages under subsection (a) of this section.

(e) Multiple violations in connection with a rental-purchase agreement shall entitle the consumer to a single recovery under this section.

(f) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (a) of this section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party.

(Apr. 13, 2002, D.C. Law 14-99, § 13, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.13. Limitation of actions.

A civil action under this chapter may be brought in any court of competent jurisdiction within the later of one year after the date of the occurrence of any violation or 6 months after the lease-purchase agreement, together with any renewals or extensions thereof, ceases to be in effect. Notwithstanding the above, a civil action may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or its assignee.

(Apr. 13, 2002, D.C. Law 14-99, § 14, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

§ 42-3671.14. Effect of unintentional violation and timely adjustment of error.

(a) A lessor shall not be liable under § 42-3671.12 for a violation of this chapter if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, such as a clerical miscalculation, computer malfunctions, programming error, or printing error; provided, that the lessor maintained procedures reasonably designed to avoid the error. An error of legal judgment shall not be considered a bona fide error.

(b) A lessor shall not be liable under § 42-3671.12 for any action performed or omitted in good faith in conformity with any administrative regulation or interpretation promulgated by the Office of the Corporation Counsel, by the Department, or by an official duly authorized by the Office of Corporation Counsel or the Department. This rule shall apply even if, after the act or omission has occurred, the regulation or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) A lessor shall not be liable under § 42-3671.12 for any error if, before the

31st day after the date the lessor discovers the error and before an action against the lessor has been filed or written notice of the error received by the lessor, the lessor gives the consumer written notice of the error and makes adjustments in the consumer's account as necessary to assure that the consumer will not be required to pay an amount in excess of the amount disclosed and that the lease-purchase agreement otherwise complies with this chapter.

(Apr. 13, 2002, D.C. Law 14-99, § 15, 49 DCR 1000.)

Legislative history of Law 14-99. — For D.C. Law 14-99, see notes following § 42-3671.01.

SUBTITLE VIII. REPEALED AND EXPIRED PROVISIONS.

CHAPTER 37. DELINQUENT HOME MORTGAGE PAYMENTS FUND
[EXPIRED].

Sec.

42-3701 to 42-3707. [Expired].

§§ 42-3701 to 42-3707. [Expired].

Expired.

Editor's notes. — Expiration of chapter:
Section 9(b) of D.C. Law 5-98, as amended by
§ 2(c) of D.C. Law 6-152, provided that the act

shall expire 5 years from the date it becomes
effective. D.C. Law 5-98 became effective Au-
gust 10, 1984.

CHAPTER 38. GOVERNMENT EMPLOYER-ASSISTED HOUSING [REPEALED].

Sec.

42-3801 to 38-3806. [Repealed].

§ 42-3801. Definitions. [Repealed].

Repealed.

(June 11, 1992, D.C. Law 9-118, § 2, 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2221.

Legislative history of Law 9-118. — Law 9-118, the “District of Columbia Government Employer-Assisted Housing Act of 1992,” was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for its review. D.C. Law 9-118 became effective on June 11, 1992.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Delegation of Authority. — Delegation of authority under D.C. Law 9-118, the District of Columbia Government Employer-Assisted Housing Act of 1992, see Mayor’s Order 92-118, October 6, 1992.

Editor’s notes. — Mayor authorized to issue rules: Section 9 of D.C. Law 9-118 provided that the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules within 90 days after June 11, 1992, to implement the provisions of this act.

Section 8(c) of D.C. Law 10-70 added § 6b to D.C. Law 9-118, which provided that the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules within 90 days after February 23, 1994 to implement the provisions of the act. The rules shall include, but not be limited to, the following:

District of Columbia Government Employer-Assisted Housing Act Rulemaking Approval Resolution of 1992: Pursuant to Resolution 9-358, effective December 11, 1992, the Council approved rules to carry out the purposes of the District of Columbia Government Employer-Assisted Housing Act of 1992.

Mayor authorized to issue rules: (1) An application procedure for the Metropolitan Police Housing Assistance Program; and.

(2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

D.C. Law 12-59, title XI, § 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of D.C. Law 12-59 provided for expiration “after 225 days of its having taken effect.”

§ 42-3802. Establishment. [Repealed].

Repealed.

(June 11, 1992, D.C. Law 9-118, § 3, 39 DCR 3189; Feb. 23, 1993, D.C. Law 10-70, § 8(a), 40 DCR 7575; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2222.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6(a) of Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993 (D.C. Law 10-63, October 8, 1993, law notification 40 DCR).

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see His-

torical and Statutory Notes following § 42-3801.

Legislative history of Law 10-70. — For legislative history of D.C. Law 10-70, see Historical and Statutory Notes following § 42-3806.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Editor’s notes. — D.C. Law 12-59, title XI,

§ 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of

D.C. Law 12-59 provided for expiration “after 225 days of its having taken effect.”

§ 42-3803. Eligibility. [Repealed].

Repealed.

(June 11, 1992, D.C. Law 9-118, § 4, 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2223.

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see Historical and Statutory Notes following § 42-3801.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Editor’s notes. — D.C. Law 12-59, title XI, § 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of D.C. Law 12-59 provided for expiration “after 225 days of its having taken effect.”

§ 42-3804. Employee savings; District government contribution. [Repealed].

Repealed.

(June 11, 1992, D.C. Law 9-118, § 5, 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2224.

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see Historical and Statutory Notes following § 42-3801.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Editor’s notes. — D.C. Law 12-59, title XI, § 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of D.C. Law 12-59 provided for expiration “after 225 days of its having taken effect.”

§ 42-3805. Deferred payment loan. [Repealed].

Repealed.

(June 11, 1992, D.C. Law 9-118, § 6, 39 DCR 3189; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2225.

Legislative history of Law 9-118. — For legislative history of D.C. Law 9-118, see Historical and Statutory Notes following § 42-3801.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Editor’s notes. — D.C. Law 12-59, title XI, § 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of D.C. Law 12-59 provided for expiration “after 225 days of its having taken effect.”

§ 42-3806. Assistance available for Metropolitan police officers.

Repealed.

(June 11, 1992, D.C. Law 9-118, § 6a as added Feb. 23, 1994, D.C. Law 10-70, § 8(b), 40 DCR 7575; Mar. 20, 1998, D.C. Law 12-60, § 1101, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 45-2226.

Temporary Addition of Section. — For temporary (225 day) addition, see § 6(b) of Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993 (D.C. Law 10-63, October 8, 1993, law notification 40 DCR J).

Emergency legislation. — For temporary (90-day) addition of section, see § 2 of the Government Employer-Assisted Housing Emergency Amendment Act of 1999 (D.C. Act 13-188, December 1, 1999, 46 DCR 10407).

For temporary (90-day) addition of section, see § 2 of the Government Employer-Assisted Housing Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-258, February 9, 2000, 47 DCR 1124).

Legislative history of Law 10-70. — D.C. Law 10-70, the "Metropolitan Police Housing Assistance Program and Community Safety Act of 1993," was introduced in Council and assigned Bill No. 10-325, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on September 21, 1993, and October 5, 1993, respectively. Signed by the Mayor on October 25, 1993, it was assigned Act No. 10-124 and transmitted to

both Houses of Congress for its review. D.C. Law 10-70 became effective on February 23, 1994.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following 42-2601.

Editor's notes. — Mayor authorized to issue rules: Section 5 of D.C. Law 10-70 provided that the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules within 90 days after February 23, 1994, to implement the provisions of this chapter. The rules shall include, but not be limited to, the following:

Mayor authorized to issue rules: (1) An application procedure for the Metropolitan Police Housing Assistance Program; and.

(2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

D.C. Law 12-59, title XI, § 1101 (44 DCR 7356), eff. March 20, 1998, provided for the temporary repeal of §§ 45-2221 to 45-2226 [1981 Ed.]. Section 2001(b) of D.C. Law 12-59 provided for expiration "after 225 days of its having taken effect."

CHAPTER 39. REAL ESTATE APPRAISERS [REPEALED].

Sec.

42-3901 to 42-3932. [Repealed].

§ 42-3901. Definitions. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 2, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3201.

Temporary Addition of Section. — For temporary (225 day) addition of this chapter, see §§ 2 to 32 of District of Columbia Real Estate Appraiser Temporary Act of 1990 (D.C. Law 8-228, March 7, 1991, law notification 37 DCR).

Legislative history of Law 8-219. — Law 8-219, the “District of Columbia Real Estate Appraiser Act of 1990,” was introduced in Council and assigned Bill No. 8-634, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by

the Mayor on December 27, 1990, it was assigned Act No. 8-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 42-3902. Establishment of the Board of Appraisers. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 3, 38 DCR 171; Apr. 18, 1996, D.C. Law 11-110, § 50, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3202.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on December 5, 1995, and January 4, 1995, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3903. Terms of members; limitation; removal; officers; meetings; quorum; compensation; Executive Director. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 4, 38 DCR 171; Apr. 18, 1996, D.C. Law

11-110, § 50, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3203.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 11-110. — For

legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 42-3902.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3904. Powers of the Board of Appraisers. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 5, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3204.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3905. Powers and duties of the Mayor. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 6, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3205.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3906. Licenses and certifications required; exceptions. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 7, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3206.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3907. Qualifications for licensure and certification; education; training; and experience. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 8, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3207.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3908. Examination requirement. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 9, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3208.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3909. Licensure and certification by reciprocity or endorsement. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 10, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3209.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3910. Issuance of licenses and certifications; scope. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 11, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3210.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see His-

torical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3911. Term and renewal of licenses and certifications. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 12, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3211.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3912. Continuing education. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 13, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3212.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3913. Nonresident licensure and certification. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 14, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3213.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3914. Temporary practice. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 15, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3214.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3915. Fees. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 16, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3215.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3916. Basis for denial or revocation of license and certificate. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 17, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3216.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3917. Investigations. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 18, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3217.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3918. Hearings. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 19, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3218.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3919. Disciplinary action by the Board. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 20, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3219.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3920. License suspension upon criminal conviction. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 21, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3220.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3921. Surrender of a license or certificate. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 22, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3221.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3922. Standards of practice. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 23, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3222.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3923. Retention of records. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 24, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3223.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3924. Contingent fees. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 25, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3224.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3925. Judicial review of Board action. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 26, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3225.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3926. Practicing without a license or certificate. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 27, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3226.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3927. Criminal penalties. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 28, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3227.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3928. Alternative sanctions. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 29, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3228.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3929. Injunctions. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 30, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3229.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3930. Filing false document or evidence; false statements. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 31, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3230.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3931. Representations prohibited. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 32, 38 DCR 171; Apr. 18, 1996, D.C. Law 11-110, § 50, 43 DCR 530; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3231.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 11-110. — For

legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

§ 42-3932. Establishment of Fund. [Repealed].

Repealed.

(Mar. 7, 1991, D.C. Law 8-219, § 33, 38 DCR 171; Apr. 20, 1999, D.C. Law 12-261, § 1242, 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 45-3232.

Legislative history of Law 8-219. — For legislative history of D.C. Law 8-219, see Historical and Statutory Notes following § 42-3901.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 42-3901.

CHAPTER 40. RENT CONTROL [REPEALED].

Subchapter I. Findings; Purposes; Definitions
Sec.

42-4001 to 42-4003. [Expired].

Subchapter II. Rent Stabilization Program

42-4011 to 42-4030. [Expired].

Subchapter III. Rental Supplement Program

42-4041 to 42-4048. [Expired].

Subchapter IV. Revenue

42-4051. [Expired].

Subchapter V. Evictions; Retaliatory Action

42-4061 to 42-4063. [Repealed].

*Subchapter VI. Conversion or Demolition of
Rental Housing*

Sec.

42-4071, 42-4072. [Expired].

*Subchapter VII. Relocation Assistance for
Tenants Displaced by Substantial
Rehabilitation, Demolition, or Housing
Discontinuance*

42-4081 to 42-4085. [Expired].

Subchapter VIII. Miscellaneous Provisions

42-4091 to 42-4097. [Expired].

Subchapter I. Findings; Purposes; Definitions.

§§ 42-4001 to 42-4003 [Expired].

Expired.

Legislative history of Law 3-131. — Law 3-131, the “Rental Housing Act of 1980,” was introduced in Council and assigned Bill No. 3-321, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first and second

readings on November 12, 1980, November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-340 and transmitted to both Houses of Congress for its review.

Subchapter II. Rent Stabilization Program.

§§ 42-4011 to 42-4030.

Expired.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-4001.

Editor’s notes. — Expiration of subchapter: Section 907 of D.C. Law 3-131 provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

Subchapter III. Rental Supplement Program.

§§ 42-4041 to 42-4048.

Expired.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-4001.

Editor’s notes. — Expiration of subchapter: Section 907 of D.C. Law 3-131 provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

*Subchapter IV. Revenue.***§ 42-4051. Rental unit fee [Expired].**

Expired.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-4001.

Editor's notes. — Expiration of subchapter: Section 907 of D.C. Law 3-131 provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

Subchapter V. Evictions; Retaliatory Action. **§§ 42-4061 to 42-4063. Evictions; limitation on evictions; retaliatory action; conciliation service [Repealed].**

Repealed.

(July 17, 1985, D.C. Law 6-10, § 905, 32 DCR 3089.)

Prior Codifications. — 1981 Ed., §§ 45-1561 to 45-1563.

Legislative history of Law 6-10. — D.C. Law 6-10, the "Rental Housing Act of 1985," was introduced in Council and assigned Bill No. 6-33, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on

April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-23 and transmitted to both Houses of Congress for its review.

Editor's notes. — Repeal of subchapter: Section 905 of D.C. Act 6-10, effective July 17, 1985, provided that the provisions of subchapter V are repealed.

Subchapter VI. Conversion or Demolition of Rental Housing. **§§ 42-4071, 42-4072 [Expired].**

Expired.

Prior Codifications. — 1981 Ed., §§ 45-1571, 45-1572.

Legislative history of Law 1-131. — For legislative history of D.C. Law 1-131, see Historical and Statutory Notes following § 42-4001.

Editor's notes. — Expiration of subchapter: Section 907 of D.C. Law 3-131 (codified as former § 45-1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance. **§§ 42-4081 to 42-4085 [Expired].**

Expired.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see His-

torical and Statutory Notes following § 42-4001.

Editor's notes. — Expiration of subchapter: subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.
 Section 907 of D.C. Law 3-131 (codified as former § 45-1597) provided that all

Subchapter VIII. Miscellaneous Provisions.

§§ 42-4091 to 42-4097 [Expired].

Expired.

Legislative history of Law 3-131. — For legislative history of D.C. Law 3-131, see Historical and Statutory Notes following § 42-4001.
 Section 907 of D.C. Law 3-131 (codified as former § 45-1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

Editor's notes. — Expiration of subchapter:

